



Overcoming Common Stumbling Blocks to Planned Gifts

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I. INTRODUCTION

In working with planned giving donors, gifts are sometimes easily arranged. You obtain a visit, raise the question about considering a planned gift and present some ideas, the donor likes what she hears and says “yes”. A few weeks later you receive a letter from the donor letting you know the gift has been arranged and enclosing a copy of the gift documentation.

More often, however, donors will raise various questions and concerns that present real stumbling blocks to their arranging a planned gift. Some of these concerns may be quite valid, whereas others will ultimately be unfounded. And then there are the donors for whom the gift seems all but arranged - the donor is eager to make the gift and understands the necessary steps to do so – but it simply never happens.

While these situations can be stress-inducing and in some instances frustrating, they also present the greatest opportunities for the gift planner to apply hard-earned skills and knowledge. Working with donors to help them decide upon the most appropriate gift given their circumstances and goals, helping them to become comfortable with that decision, and then moving them to a completed gift can be among the most rewarding moments of the job. Your donor’s joy in the gift becomes your joy and you can take a great deal of satisfaction in knowing you played an integral part in making it happen.

The goal of this paper is to help you understand some of the reasons for donors’ inaction and give you some suggestions and tools for helping them overcome the more common stumbling blocks to a gift. In doing so, an assumption is made that you know enough about the donor to feel comfortable that whatever gift you are suggesting is an appropriate one for his or her situation. Indeed, if for any reason you feel a gift would not be in the donor’s best interest (i.e., it doesn’t pass the “Grandmother” test), it is incumbent on you to table the conversation, either permanently or perhaps just to a later time.

The first half of this paper will discuss general donor caution and inertia leading to inaction. The second half will discuss specific donor objections. Suggestions will be made as to how these stumbling blocks might be overcome.

II. GENERAL DONOR CAUTION AND INERTIA

A. Assessing the Nature and Appropriateness of a Donor’s Caution

1. The Role of the Economy

Even in the best of times, some people who truly want to support a charity’s work in a significant way are nevertheless extremely reluctant to make any sort of large gift. In economic climates such as the one in which the world has found itself during the past several years, the number of donors who are worried, anxious, or cautious increases considerably.

Thus, on the one hand, a gift planner should not hesitate to suggest any and every giving arrangement that legitimately merits a donor's consideration. It's just that the planner should be aware that the likelihood that his or her overtures will be met with skepticism, wariness, or some other form of resistance is higher at present than in the past, and to a degree this is understandable.

Concern about the economy can take two forms. First, there is a generalized concern in reaction to the following: high unemployment, volatile stock markets, low interest rates that make fixed income investments unappealing, and the budget crises faced by governments at all levels. It is almost impossible for any of us or for our donors to tune out these negative developments. In fact, one would be naïve to ignore them.

As donors examine their personal situations, they may quickly develop as well a much more particularized concern. The value of their assets, as well as the income derived from those assets, may have declined significantly. If they are still working, they may be justifiably concerned about the future of their jobs, along with the likelihood of finding a comparable new position in a reasonable amount of time (with any such new position perhaps being no more stable than the former one). If they are retired, they may be very nervous about whether one or more of the sources of cash flow on which they depend will remain reliable.

Indeed, the notion of making a planned gift requires a donor to assess things as they stand not only currently, but also in the years or decades to come. Likewise, that assessment properly entails sizing up not only one's personal situation, but also what's going on in the wider world.

Still, a gift planner should try to help donors concentrate on developing a level-headed awareness of their own circumstances. The fact is that some individuals are weathering the current financial storm quite well. Others have experienced relatively minor setbacks but are fairly well positioned to avoid sustaining major setbacks. In short, for some donors there may be quite a distinction between the overall economy and what the reality is for them – a distinction, one must bear in mind, that can occur in good times as well as bad times.

Therefore, an initial challenge a gift planner will face will be to discern what is actual for a donor and what the donor's perception is. A given donor may continue to be wealthy enough to make a lifetime and/or a testamentary planned gift, but if his or her net worth has declined by 10 or 20 percent in recent years, he or she may not feel sufficiently wealthy. The gift planner must first meet the donor where he or she is and then help the donor explore whether perceptions can be modified in light of facts.

True, this will require a measure of cooperation and forthrightness on the part of the donor. Many donors may be reluctant to share details of their finances. This means that, perhaps at least initially, the gift planner must be prepared to have a more conceptual conversation. For example, if a donor indicates that he or she won't even consider a gift

until the stock market improves, the gift planner could probe a bit to learn what the donor would regard as sufficient improvement in terms of a publicly available measure, such as a stock market index. This, in turn, will give the gift planner a sense of whether it might make more sense simply to suspend further discussion for a period of time. It might also lead the gift planner to ask a follow-up question about the extent to which the donor's actual portfolio has tracked a particular index in the past and/or could be expected to do so going forward. The gift planner might also point out that while the value may not be as high as it once was, it is still high relative to what the donor paid for the stocks or mutual fund shares.

Additional inquiry could be made about why the value of the donor's portfolio is important to him or her. Do the stocks constitute a significant source of income? Has the donor earmarked the assets to serve long-term objectives, such as financing a purchase or providing for heirs? Or does the donor simply derive a vague sense of security from a certain level of wealth? Whatever the response, it should give the planner a better idea of the donor's thinking and how a gift might be structured to satisfy the donor's concerns.

In summary, when dealing with economic concerns, a gift planner should first determine how much the concerns are general and how much they are personal. Thereafter, while not dismissing the validity of general concerns, he or she should zero in on the donor's individual situation, striving to separate what is real from what is perceived and then seeking – gently – to align perception more closely with reality if there is a mismatch. By no means will this approach always quell the donor's reticence. Indeed, it may confirm that such reticence is justified. Yet even this knowledge is valuable, for it will help the gift planner decide whether it is worthwhile continuing to engage the donor actively or better to postpone further conversations for a while.

2. Insufficient or Inaccurate Information

A donor's caution may be attributable simply to not really comprehending what a gift planner is proposing. Even though ensuring that donors receive “a full description and an accurate representation of all aspects of any proposed charitable gift plan” is one of a gift planner's fundamental ethical obligations, as set forth in the *Model Standards of Practice for the Charitable Gift Planner* adopted by the Partnership for Philanthropic Planning and the American Council on Gift Annuities, the planner will want to ascertain that a given donor actually understands what has been presented. Sometimes the very best illustration will still need to be accompanied by a detailed conversation with the donor to ensure that such understanding exists. A gift planner who takes for granted that the written (or oral) information supplied by the charity will speak for itself risks overlooking opportunities to double-check that what is intended to be conveyed is in fact registering with the donor.

In some cases, a donor may previously have received incorrect information from another charity or from an advisor who lacked adequate familiarity with whatever is now being put forth for the donor's consideration. This means the gift planner needs to be alert to the possibility that the donor is rejecting correct new information because information

obtained by the donor previously from any of a number of sources has already been “baked in” to the donor’s thinking.

3. The Donor’s Disposition

Certain donors are simply innately cautious. This aspect of their personality may be literally something they were “born with,” for want of a better term. More likely, however, it is a trait they have developed in response to their upbringing, their cultural background, or life experiences stretching back many decades.

In such instances, it probably will not be fruitful for a gift planner to psychoanalyze the donor or attempt to persuade him or her to set caution aside. The better approach is to take caution as a given and to present options that are realistic in light of the donor’s personality. A number of these options will be explored later in the paper.

Fortunately, not all donors are cautious. Some know exactly what they want to do and are rarin’ to go. Ironically, a few of them might actually benefit from a measure of caution if they seem otherwise about to act rashly or hastily. This is just one more good reason to encourage donors to consult their advisors before arranging a gift. Moreover, if a gift planner sees an obvious flaw with what a donor is proposing, he or she has an obligation to bring the problem to the donor’s attention and suggest any alternatives that may be more suitable.

Thus, donors might be too cautious, appropriately cautious, or not cautious enough. A gift planner’s first objective will be to determine the nature and level of caution a donor is displaying. This will enable the planner to assess how to proceed. A donor who is too cautious may be open to being guided gradually to a conclusion that his or her reticence is unfounded. A donor might be appropriately cautious if an objective analysis would confirm this *or* if his or her make-up simply precludes any other reaction. With respect to a donor who is not being cautious enough, the gist of a gift planner’s response should be as set forth in the immediately preceding paragraph.

4. Emotion

Finally, the dual significance of emotion should be taken into account. On the one hand, a donor’s emotional alliance with a charity’s mission is ultimately what will drive a decision to make a planned gift, with more cerebral attention being devoted to details such as the timing, size, and structure of the gift and which assets to draw upon. In this regard, emotion can be a gift planner’s ally. By contrast, if caution engendered largely by emotion has come to stand in the way of the donor’s ability to think clearly, the planner (with assistance from the donor’s advisors) will need to help the donor sort through his or her thoughts and feelings.

5. General Observations

Basically, a gift planner should approach each donor in a positive manner, assuming discussions will be productive and that nothing beyond a normal level of caution will come into play. Nevertheless, the planner needs to be prepared for the possibility that the donor's caution will require special attention. Even in the case of innately cautious donors, there can be perfectly appropriate gift plans they should be urged to consider. Before focusing on those, however, it is useful to review some methods for engaging in constructive conversations with donors who appear hesitant.

B. Tips on Talking with Cautious Donors

1. Threshold Characteristics

Perhaps related to, yet ultimately distinct from, a donor's sense of caution is his or her sense of privacy. Some donors are naturally comfortable examining the nuances of their thinking, offering useful levels of detail, and listening intently to new ways of looking at their situations, whereas others gravitate toward simplicity and resist revealing "too much."

There may be only so much progress a gift planner can make in exploring why a donor is being cautious and then offering realistic alternatives. Still, a handful of ice breakers, anxiety diffusers, and sympathetic affirmations can be helpful in trying to get to the root of a donor's sense of caution and then determining what approaches might make the most sense.

2. Useful phrases, lines of inquiry, and comments

The following is not an exhaustive collection of things a gift planner might say, but it will at least give a flavor of what may prove effective.

- Try to draw out the donor's concerns by posing gift options that make sense based on what is known so far (which may be rather little):

- "Have you ever considered . . .?"
- "Are you aware that . . .?"

The responses they furnish will give a better sense of what's on the donor's mind or what aspects of his or her situation deserve closer scrutiny.

- Use the third person in a way that describes possible gifts by letting the donor know what others have done (help them to see their gift consideration as the norm):
 - "Many of our donors, like you, are concerned about expenses they might encounter in the future, and some of them have decided to arrange a future gift rather than a present one."

- “Some of our supporters also want to make sure they address [X, Y, or Z factor], so they have chosen to . . .”
- “Some of our donors have chosen to make their gift by naming us as a beneficiary of their retirement plan. This is a very tax-wise way to give...”
- “Here’s something others have found useful to contemplate . . .”

- Empathize and, when applicable, confirm that the donor’s concerns are reasonable:
 - “I understand your concerns as I’ve been trying to get *my own* estate plan in order...” (or:”,... as I had similar thoughts when I did my own estate plan.”
 - “Well, I worry about that, too!”
 - “[I think you’re wise to be/I’d be surprised if you told me you weren’t] concerned about . . .”

- If a donor hesitates to consider a gift because family members may feel alienated, he or she can be prompted to involve them:
 - “Have you ever discussed this with your spouse/your children?”
 - “Would you feel better having so and so present that next time we meet?”

- Encourage thoughts and actions that will keep the process moving forward:
 - “Is there any way the organization can be helpful to you?”
 - “Would you like me to send you some information on . . .?”
 - “Do you have an accountant or someone you can rely on for good advice? If not, I can provide you with some suggested names.”
 - To the extent it is indeed true, assure the donor that what’s being proposed is easy to implement and let him or her know that help from the charity is available.

- Reassure the donor:
 - If a revocable arrangement is under consideration, remind the donor that the gift plan is not necessarily set in stone – it may be possible to change it as needed.
 - If a donor fears getting a flood of solicitations, tell him or her that you honor privacy.
 - Tell a donor who fears too much fuss that he or she will be able to choose a suitable level of involvement.

C. Overcoming Estate Planning Inertia

Sometimes what is holding a donor back isn't so much the particulars of the gift consideration but rather the estate planning process itself. This is particularly true in the case of donors that have not yet done any estate planning or, if they have, it was many years and perhaps worlds ago. Since many planned gifts are arranged as part of larger overall planning a donor is doing, a first step is often getting donors sufficiently motivated to do their overall planning.

You will do your donors a wonderful service if you can articulately make the case for their undertaking estate planning and convince them of its importance. Estate planning is not a trivial process – it takes time, money, and grappling with difficult issues. Generally speaking, unless someone truly feels the need and importance of taking action in a given situation, inertia will rule the day and no change will occur. Gift planning is no different. There are several ways you might be successful in overcoming this inertia:

- Make sure you have done your own estate plan. This allows you to speak from personal conviction about the importance of planning, and you can draw upon your own experience in addressing your donor's doubts and questions. It will be very difficult to convince someone of the importance of such planning if you have not engaged in it yourself.
- Ask them about their experience at the passing of their parents or other relatives. Did administration of the estate go smoothly or do they wish more planning had been done by the deceased? If they haven't experienced the lack of plans first hand, there is a good chance that a friend or family member has, and has shared with them the difficulties they encountered.
- Refer them to information you have found on the internet that is legitimate and persuasive. One such 'quirky' site is "Get Your S**t Together!" (<http://getyourshitttogether.org/about/#.VVeTR1KYaos>). The site grew out of one woman's experience handling everything after the sudden death of her young husband, and her desire to ensure that others don't experience the pain and trauma that is avoidable with advance planning. Given the tone of the website and the language used (she is, after all, trying to *move people to action*), you may want to only selectively refer people to this site. You can also look for similar sites that have a more conservative approach.
- Sponsor an estate planning seminar. Start with seminars on general estate planning topics rather than being limited to a charitable giving topic. The idea is to demystify estate planning enough so that people will overcome any unstated fears or reservations they have and engage in their own planning. A more general topic will also help to attract a larger audience.

Multiple charities in the Seattle area have joined together to sponsor two estate planning seminars a year to which they all invite their donors. This helps minimize the time and expense to each charity of putting on such a seminar and ensures a more

robust audience. Often the presenters will be estate planning attorneys who would like to help the philanthropic community and appreciate exposure to possible clients. You may have an estate planning attorney (or other professional advisor) as a trustee or director who would be willing to present.

A program you might want to utilize in your seminar planning is called *Five Wishes* offered by the non-profit Aging with Dignity. They produce a 12-page booklet called “Five Wishes” that helps to facilitate conversations about, and makes a legally enforceable plan for, end-of-life health care. The booklet is user friendly and explains everything using plain English (and 27 other languages). In addition to the booklet itself, there is a “Presenter’s Guide” and a DVD that can be used as part of a presentation. While *Five Wishes* only deals with one part of the estate planning process, it is a “turnkey” offering and could help get you started.

E. Philanthropy as a Social Act

Earlier in this section it was suggested that one of the ways to encourage donors to make a planned gift was to let the donor know what others have done. This is something many gift planners have known intuitively and donor stories have been freely shared. There is now some fascinating research that supports this intuition and underscores how influential social examples can be in charitable estate decisions. This research has been presented by Dr. Russell James, J.D., Ph.D., CFP, and Professor of Personal Financial Planning at Texas Tech University.

Dr. James cites a study recently done in the United Kingdom where 3,000 testators in the normal process of completing their wills were randomly assigned to one of three groups. In the first group, the estate planning attorney did not ask about gifts to charity. The second group of testators was asked, “Would you like to leave any money to charity in your will?” The final group was asked the question following a simple statement of a social norm: “**Many of our customers like to leave money to charity in their will.** Are there any causes you’re passionate about?”

The difference in the resulting charitable bequests between the three groups was dramatic:

	Group 1 (no ask)	Group 2 (simple ask)	Group 3 (social norm)
Bequest Arranged	5%	10.4%	15.4%
Avg. Size of Bequest	\$5,610	\$5,291	\$11,333
Total Bequest \$’s	\$280,500	\$550,264	\$1.75M

A simple statement of social norms before the ask increased participation in giving by 50% and more than doubled the average gift of participants.

Some takeaways from Dr. James' research:

1. Present charitable giving in the estate plan as a norm. Simply how you word your question to your donor can make a big difference. Try phrasing it something like, "Many of our donors like to leave a gift to ABC charity in their will. Would you be interested in supporting us in that way?"
2. Use "family" rather than "formal" words to describe a gift. By "family words," Dr. James is referring to simple language and life stories; "formal" words are technical, contract or market terms. He says to think about how you would say it in normal conversation with your grandmother. For example, say "make a gift to charity in your will" rather than "make a **bequest** gift to charity."

Many gift planners know it is best to minimize the use of technical terms and jargon but, once again, Dr. James' research brings compelling numbers to support this intuition. His survey results show that using market/contract language depresses interest in charitable giving and describing the same transaction with family/social words produces much better results.

3. Share the notion of honoring a family member through a tribute gift to charity in the will. Even among those initially asked the best phrased charitable bequest question, a significant percentage increased their intention to do so even more when presented with the option of honoring a friend or family member. The best results were gained when the statement started with the honor language, i.e., "Honor a friend or family member by making a memorial gift to charity in your will and testament."

Marketing tip: next to the checkboxes on your reply envelopes where donors can indicate if they have made an estate gift to your charity, include boxes so they can indicate if it is in memory of or in honor of someone. This not only tells you more about the gift but it also serves as a simple reminder to other donors that this is a possibility.

III. SPECIFIC OBJECTIONS

So far we have addressed donor caution generally and overcoming the inertia it engenders. Next will be considered some specific common objections to planned gift suggestions and some ideas on how they might be addressed.

A. Estate Gifts Are Only for the Wealthy, and That's Not Me

For many donors the idea of making an "estate gift" simply doesn't occur to them or resonate with them because they don't view themselves as having an "estate". While we know that all people, regardless of their level of accumulated wealth, benefit from what is collectively called "estate planning," popular perception is that just the affluent have need for it. A subsequent corollary is that only the wealthy make estate gifts.

Here are some ways to counteract this perception:

1. Share stories about bequests and other end-of-life gifts of all sizes. It is a natural human tendency to talk only about large, transformative bequest gifts. However, make an effort to balance those stories with stories about more modest gifts. By talking about them you honor the donor and the gift and communicate its value to your organization.
2. When talking with donors and in your publications, share information about the *range* of estate gifts your organization receives. Tell donors that bequest gifts from \$XXX to \$XXX,XXX were received during the year (or other period). Let them know that gifts of all sizes are appreciated and make a difference collectively. You can indicate the desire and hope that the donor's final gift will represent what is a "reach" gift for them, but whatever level that ends up being is meaningful for the organization.
3. In a departure from usual practice with annual and major gifts, do not have a minimum gift size to qualify as a member of the planned giving donor recognition group (a legacy or heritage society). Avoid distinguishing different levels of membership by gift size. If you want to have some tiers, consider differentiating on the basis of those who make both an estate gift provision **and** an annual gift (that could be of a minimum size) and/or have been giving for a minimum number of years.
4. Remind donors about assets they may have neglected to take into account when considering if they had sufficient wealth to make an estate gift. For example:
 - a life insurance policy that is no longer needed for family or business purposes,
 - a commercial annuity contract if it will still have some value at their passing, and
 - U.S. savings bonds.

B. Where Do I Start? I Don't Have an Attorney [or other advisor]

Getting a donor beyond "yes" is all about removing potential barriers to a gift. Not having or knowing an estate planning attorney to turn to for some planning and to arrange a gift is a fairly common issue and easily dealt with. Just as you have sample bequest language to share with donors, have a list of estate planning attorneys (and perhaps other types of advisors) that you can refer them to.

You should always suggest at least three names so that the donor has a choice of which attorney to use. The decision about an advisor ultimately belongs with the donor and while you can assist in the process by giving some names and narrowing down possibilities, your organization should not make that decision for them.

Sometimes deciding who goes on the list can be fraught with dangers of a political nature, particularly in smaller, more tight-knit communities. Some non-profits address this by having a long list of just about every attorney in town. This can be less than helpful, however, as the donor remains paralyzed by too much choice and no indication of where to begin. A good

compromise is to have a robust list in-house and give out names selectively, on the basis of matching donor needs with the characteristics of various attorneys. For example, your donor may have expressed to you that she would be more comfortable with a female attorney or would like someone located nearby. Just be mindful about rotating through all the names as much as possible.

Often part of this discussion is questioning by the donor as to whether they even need to see an attorney, along with an expressed reluctance to pay the admittedly not insignificant attorney fees. Never be persuaded to pay the cost of the donor seeing their attorney. Some donors, in their zeal to avoid legal fees, have posited this to non-profits as a reasonable request given the size of the intended bequest. This would be private inurement of an individual with public money, which is strictly against IRS rules. It also begs the question of which party the attorney is representing and opens the door to charges of undue influence by disgruntled heirs.

If a donor mentions using estate planning software, it is best to caution them against this. Instead, gently remind them that we pay for other kinds of expertise, e.g., dentists, gardeners, accountants, financial advisors, etc. and that legal advice is no different. In fact, these are important decisions and a modest amount of money spent now to have it done right can save tremendous costs, emotional and financial, down the line.

C. I Won't Owe Any Estate Tax and So I Won't Have any Tax Savings

In 2015, a donor can leave \$5.43 million to heirs at their passing (assuming no lifetime taxable gifts) and owe no federal estate tax. If it is a surviving spouse that has passed away, that amount can be as great as \$10.86 million due to the portability of the exemption between spouses. This is good news for our donors but means there are often no estate tax savings to be had from making a bequest to charity.

While it is rare for a donor to explicitly mention that as a barrier to making a bequest gift, you can sometimes tell that she is disappointed not to receive some kind of tax benefit from the gift. Although the desire to make a difference is the primary reason people make legacy gifts, some are more inclined to arrange such gifts if they can reduce taxes by doing so. Showing them how to do this might be the tipping point for their decision.

There are several possible answers to this:

1. Children realize the tax savings

Assume you have a donor that has an estate totaling \$1 million. He would like to leave 10 % (\$100,000) of his estate to your charity and the remaining 90% in equal shares to his three children (\$300,000 each). The donor's estate is under both the federal and state exemption amounts and is not subject to estate tax.

In order to realize some tax savings from the gift, you could propose to the donor that he give each child \$333,333 instead of the \$300,000 originally intended, and at the same time convey

his wishes to his children that each of them contribute \$33,333 to your charity. Assuming that each child is subject to a 33% income tax rate, he or she would save \$11,000 in income tax over the period that he or she claims the deduction.

The donor's children would be under no legal obligation to make the gifts. To qualify for an income tax deduction, they must have full control of the money and then make a gift as a free and voluntary act. However, they would have a moral obligation to fulfill the wishes of their father. The donor might say something like this to his children: "As you know, your mother and I were long-time supporters of ABC charity because we believed it provides a valuable service to people in this community. While both of us wanted most of our estate to go to you, we had talked about leaving 10% to ABC charity. I would like to do that in a way that saves taxes and thereby benefits you as well as the charity. Thus, I want to inform you that I have decided to leave each of you my entire estate in equal shares, and it is my wish that you would choose to contribute 10% of what you receive to ABC charity. You will be entitled to an income tax charitable deduction for the contribution, and the tax savings will indirectly add to your inheritance."

This arrangement works where there is good communication and trust within the family. It effectively increases the inheritance of the children while fulfilling the parent's charitable intent. Discussion of the parent's wishes also provides an opportunity to teach family values to the children.

In the past, discussions of a charitable bequest often entailed estate tax savings. When the exemption was \$600,000, or even \$1 million, as it was at the beginning of the century, a large number of people could reduce estate taxes with a charitable bequest. Now, when the exemption is \$5,430,000 only about 0.3% of donors realize any federal estate tax savings from a charitable bequest. If they live in a state that has a state estate tax, and the exemption level is lower than the federal exemption, they might save state estate taxes with a charitable bequest even if they would save no federal taxes. Still, for most people estate taxes are no longer a consideration in charitable legacy planning.

Some gift planners might hesitate to mention the indirect legacy gift in their marketing material for fear that it would make expectancies less certain because family members might not necessarily follow through and actually make the contributions. They consider that being named in the donor's will or beneficiary form is more important than the inducement of a tax incentive. Even if they decide not to mention the idea in their literature, they can discuss it with philanthropic donors whose estates are below the exemption level and have the right family dynamic. When a charitable bequest will be made at the death of the first spouse, and no estate tax savings would result, you could also mention the possibility of having the surviving spouse make the gift.

Technically, a donor would not qualify for a charity's legacy society when the intended gift will be made by heirs. However, a charity could elect to offer membership in its legacy society based on a statement of intention by the family.

2. Accelerate gift and realize income tax savings

If the situation is right, a donor could consider accelerating their bequest gift and giving the money to the charity during their lifetime. In that way, he could take an income tax deduction and save on his income taxes.

For example, assume you have a donor, age 88, who has included a bequest of \$100,000 to your charity in his will. He is in failing health with a heart problem and does not expect to live more than two or three years. He has a good income from retirement funds and investments, and he considers this income and his Medicare coverage to be sufficient for whatever medical care he requires.

The donor could make an outright contribution of \$100,000 to the charity and then remove the bequest to it from his will. Since he is in a 33% tax bracket, he would save \$33,000 in income tax, so his distributable estate would be enlarged. If he made his gift via the bequest, there would have been no tax savings.

3. Consider a “back-up” gift annuity

In the above example, the donor felt confident enough with his other resources that he could make his bequest gift during his lifetime. However, you might have a donor that is more concerned about having enough to meet her needs and is reluctant to simply give away the money during her lifetime. That worry is what prompted her to make her legacy gift through a bequest in the first place. Consider how a gift annuity might be used to accelerate the gift and yield tax savings.

Your donor, age 86, has included a charitable bequest to your charity in her will for 10% of her residual estate. If she were to die today, the charity would receive approximately \$100,000. She does not expect to deplete her estate, but she is not absolutely sure whether she might need income from all of her assets. Her estate is too small to be subject to estate taxes.

The donor could contribute \$100,000 for a flexible deferred gift annuity reserving the right to begin payments anytime during the period 2016-2035. (She would be 106 in 2035.) She has no intention of ever starting the payments. The option to do so is simply a safety net. She extended the possible payment-starting date to 2035 when she is 106 because she doesn't expect to live to that age and doesn't want payments beginning before death unless she specifically requests them. If she never needs the payments, the residuum from the gift annuity could be much larger than 10% of her estate value at the time of her death, and the deferred annuity, unlike the bequest provision, is irrevocable.

The donor receives an income tax charitable deduction of \$63,012, which saves her \$17,643 in income tax (28% tax rate). Although she doesn't have access to the principal as she would have with a bequest provision, she does have access to regular payments if she ever needs them. Again, there are tax savings that would not have resulted from a bequest.

4. Suggest the donor use his IRA to make the charitable bequest

It is possible for a donor to make a bequest gift via a “beneficiary designation” gift rather than through his will. Like a charitable bequest, a beneficiary designation involves a transfer of assets to a charity upon the death of the donor. In this case, the transfer is made in connection with one or more investment or financial arrangements the donor entered into during his or her lifetime. One of these possible assets is a donor’s IRA. While using the IRA to fund the bequest gift does not change the fact that in our scenario there are no estate tax savings, it does enable an income tax savings.

For example, assume your donor has arranged to leave \$50,000 in cash to your charity at his passing through his will. Separately, he has an IRA worth \$500,000 that he is leaving to his daughter. This money will be taxable as ordinary income to his daughter when he dies, just as it would have been taxable to him had he taken distributions during life.

Instead of using cash to make the charitable gift, the donor could make the gift using part of his IRA. (The IRA owner can name multiple beneficiaries of an IRA, whether charities or individuals, by simply specifying what percentage of the IRA proceeds each is to receive.) He could name your charity as a 10% beneficiary and his daughter as a 90% beneficiary of the IRA.

By virtue of its tax-exempt status, the charity would not owe any income tax on the amount it receives from the IRA. The full \$50,000 would be available for it to use in its mission. However, had that \$50,000 from the IRA gone to the donor’s daughter, she would have paid \$14,000 in income taxes (assuming a 28% income tax rate) and been left with a net of only \$36,000. By receiving the \$50,000 in cash from the estate instead, the daughter keeps the entire \$50,000, the charity has the full \$50,000 from the IRA, and \$14,000 in income taxes has been avoided.

D. I’m Worried About Having Enough to Meet Future Needs

This is a very common and understandable concern. This is where end-of-life, revocable gifts shine - the donor has the satisfaction of knowing she has arranged a generous gift to charity but continues to retain control over the asset during her lifetime should she need it to meet her expenses. The gift can also be changed or revoked entirely if her circumstances change.

1. Good Old Bequests

A charitable bequest is simply an outright transfer to a charity made upon death through the donor’s will (or through a revocable living trust, if he or she happens to have created one). It can be as simple as a sentence or two in the will or living trust instrument. Even if the donor already has a will, it can often be revised to include a charitable bequest by means of a codicil. Similarly, a living trust agreement can usually be amended easily.

Bequests are attractive to many, many donors who do not have to worry about either federal or state estate taxes but do have other concerns. This is because bequests are extremely flexible. This flexibility results in part from the fact that the arrangement can be either amended or revoked if circumstances change. But it is also attributable to the many ways in which a bequest can be structured. Here are the basic choices:

- Specific sum of money

“I give to the ABC Charity, currently of [address], or its successor organization, the sum of [amount]. . .”

- Specific property(ies) such as real estate, stocks, bonds, jewelry, works of art, or other items. Unless the property is useful to the charity, it will be sold, and the proceeds, less any appraisals and selling costs, applied per the terms of the bequest.

“I give to the ABC Charity, currently of [address], or its successor organization, [description of property]...”

- Rest and residue of estate. The charity is given all or a percentage of what remains of the estate after paying debts, taxes, expenses, and other bequests.

“I give to the ABC Charity, currently of [address], or its successor organization, all [or stated percentage] of the rest, residue, and remainder of my estate. . .”

For a donor who does need to take estate taxes into consideration, i.e., has a taxable estate, you should point out that his or her estate will be allowed an unlimited estate tax charitable deduction for a charitable bequest. The deductibility of a bequest for estate tax purposes means such a gift actually costs heirs only what they would have received after the payment of estate taxes, had the gift not been made. This cost ends up being even less if, as is the case with donors living in certain states, state estate taxes apply over and above federal estate taxes.

Sometimes a donor won't have to be concerned with federal estate tax but does need to consider state estate tax. For example, in the state of Washington, an estate is subject to state estate tax once it exceeds approximately \$2 million. There may be some donors who lie in between the two amounts and who will owe some state estate tax despite the fact that no federal estate tax will be owed. This offers an opportunity to remind donors who may be focused solely on the federal estate tax threshold that the relevant state has a lower threshold. In essence, it furnishes a donor whose estate is “only” \$X million with a tax incentive for considering a bequest. It can also serve as an impetus to move the donor to do their estate planning.

2. Often Better Than Bequests: Beneficiary Designations

As mentioned above, a beneficiary designation gift is similar in nature to a bequest gift because it involves a transfer of assets to a charitable organization upon the death of the

donor. In fact, it is sometimes referred to as a “bequest like” gift. With a beneficiary designation, the transfer is made in connection with one particular asset.

A donor can name a charity to be a beneficiary of any of the following once his or her life has ended:

- an IRA or a qualified retirement plan, such as a 401(k) account
- a commercial annuity contract
- a life insurance policy
- a bank account (savings or checking)
- a brokerage account (investments)

The federal and state estate tax benefits are the same as those associated with a charitable bequest. In addition, beneficiary designations are administered outside of the probate process, meaning a donor’s gift will take less time to reach the charity (and will likely be subject to fewer complications) than with a bequest gift.

Yet probably the more important advantage of a beneficiary designation is that it is generally even easier to arrange – or change – than a bequest. All the donor needs to do is complete a form supplied by the entity that maintains the account or other financial instrument and then send the form back to the entity. Note: Even though this can be done without the involvement of a lawyer, a donor should always be advised at least to consult his or her lawyer regarding implementing or revising any element of his or her overall estate plan.

With regard to the first four of the five possibilities, what the charity will receive is cash. This makes it possible for a donor to name multiple beneficiaries (whether charities or individuals) by simply specifying what percentage of the cash each is to receive. A brokerage account, however, features less flexibility, in that it will be either difficult or impossible to apportion non-cash assets between/among multiple beneficiaries in precise percentages.

Finally, it may be possible for a donor to name a charity as the beneficiary of whatever remains at death in a donor advised fund he or she may have created. This can be the case with respect to funds maintained by charitable organizations related to financial services firms such as Fidelity and Vanguard. This sort of gift will not qualify for an estate tax deduction, yet it can still provide valuable support for a charity at the end of a donor’s life.

Some Beneficiary Designations Are Even More Equal Than Others

As discussed earlier, significant income tax savings can be realized by using certain assets (or a portion thereof) for beneficiary designation gifts. Most often this is achieved by designating charity to receive funds from an IRA. However, the same income tax savings can be realized with most qualified retirement plans and some commercial annuity contracts (the tax savings might be somewhat less as annuity distributions are usually a mix of taxable income and non-taxable principal).

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 IRA and qualified retirement assets in making charitable gifts and to earmark other assets for individuals. Not all donors are aware of this fact, so charities need to keep up, and perhaps even step up, their efforts to spread the word.

As noted above, an additional feature that distributions from IRAs and qualified plans to charity share with bequests is deductibility of the distributions for federal and state estate tax purposes. Nevertheless, given the fact that relatively few estates are subject to estate tax, it is the opportunity to save income taxes from distributing this type of asset to charity that should receive primary emphasis.

For example, if a donor wants to leave \$25,000 to a favorite charity and \$25,000 to an individual, 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 individual. The opposite approach would also be fine with the charity but would not be as good for the individual.

E. I have children and grandchildren to think about

If our donors are fortunate, they will have surviving loved ones when they pass away, whether they are children and grandchildren, nieces, nephews, partners, or good friends – the potential list is long. As gift planners we need to recognize that most often family and friends will come first in a donor's estate planning. You should acknowledge this to your donors, assure them that that is perfectly fine and understandable, and that it is not your intention to replace those who are the 'natural objects of their affection'.

For some donors the conversation about an estate gift will end here. If their financial resources are modest and/or their circle of loved ones large, all that they have will be reasonably passed to their heirs. You might make a note to check back with the donors in future years to see if their circumstances have changed, but for now it is time to focus on other donors.

However, for other donors you might have the sense that their level of wealth is more than sufficient to provide for heirs and make a bequest gift to your charity. Sometimes donors will automatically take the stance that they should/need to leave everything to their children without thinking too much about that decision. That could be for a variety of reasons – perhaps it is the easier path in deciding what to do with their wealth, it is what the view a 'good' parent would do, or they have concerns about their children having enough to meet their needs.

In this circumstance, it can be helpful to explore that position with the donor. With a little more thought donors might come to realize that they have enough to be generous with their children and also provide for the causes that are important to them. Or, if you show them ways a planned gift can help them meet their goal of providing for their children, they can become open to such a gift. Here are some ways to address the first suggestion and the next section will offer some examples to think about with the second suggestion.

How much is enough?

How much to leave to children and grandchildren is a judgment call. Some parents transfer as much of their estates as possible to heirs. Others fear that transferring too much wealth may discourage productivity and undermine self-esteem. Warren Buffet gives something to think about when he posits that the perfect amount to leave children is "enough money so that they would feel they could do anything, but not so much that they could do nothing."

Children's well-being is broader than their checking account

The environment in which children and grandchildren live also plays a part in their ultimate well-being. Realizing this, some parents contribute to their church, schools, health care institutions, environmental groups, etc., considering that these contributions indirectly are part of the legacy of their children and grandchildren.

Most parents realize the importance of transmitting values as well as money. As one person commented, "What you leave in your children is more important than what you leave to them."

The charitable gift won't be missed

Consider the case of a donor with three children. He might say to them, "Would you mind if instead of receiving 33 1/3% of all that I own, you each received 30% and I made a gift to 10% of my favorite charity?" Receiving about 3% less than he or she otherwise would is a modest diminution but might result in a significant and appreciated gift to charity. A gift of 10% to charity is used as a common tithe figure but it could be adjusted depending on the size of the estate and the number of children.

Charity as a child

You might ask the donor to consider your charity in the same light as one of their children. Just as they want to provide sufficient resources to meet their children's needs, they want to also do that for their favorite cause and provide the charity with resources it will need in future years. To follow the example above, instead of leaving his estate in three equal shares, the donor would divide the estate in four equal parts, leaving one to each child and one to the charity.

Name the charity as a contingent beneficiary

With bequest or beneficiary designation gifts, the charity can be named as a contingent beneficiary that will receive any proceeds only if the primary beneficiary(ies) is(are) not living. There are any number of contingencies that could be identified, depending on what keeps the donor awake at night, and it is even possible to identify a string of two or more contingencies that would need to be fulfilled before the charity would receive any gift. Similarly, the charity might receive one gift if a certain contingency is met and another gift if a separate contingency is met, or the size or nature of the gift it receives could depend on one or more contingencies. A "wipe out" clause results in a charity receiving all of a donor's estate because no family members survive the donor,

Unfortunately, most beneficiary designation forms do not accommodate contingent designations very readily. Nevertheless, it may be that the donor's lawyer can draft a

customized designation provision that will be acceptable to the entity maintaining the account or other arrangement.

Even though the charity would prefer to be a primary beneficiary, it should gratefully acknowledge a contingent beneficiary designation. A donor who feels appreciated for such a designation may take steps to assure a more likely charitable gift as family responsibilities diminish and the estate grows.

Insurance as wealth-replacement

One way a donor might be able to make a planned gift and not reduce the legacy meant for children, is to use a life insurance policy to replace the donated asset. This approach might even save taxes in the process.

The notion here is that the donor makes some sort of charitable gift during life (including even an outright contribution) but then uses a portion of the financial benefit associated with the gift (whether it is the cash flow from a life income plan or the income tax savings associated with the charitable deduction received in making a gift) to pay the premiums on a life insurance policy. When the donor dies, the life insurance policy benefits the donor's children (or other heirs).

For example, your donor, age 60, owns timberland with a value of \$2,000,000 and a cost basis of \$200,000. He would like to make substantial gifts to several charities, receive life income, and not diminish his children's legacy. He accomplishes these objectives by transferring the timberland to a charitable remainder unitrust with a 5-percent payout rate, and then purchasing a life insurance policy on his life. The donor makes the children the owners and beneficiaries of the policy. Each year he gives them some of the after-tax income from the unitrust and they use these dollars to pay premiums on the policy. At his death, the children will receive the proceeds of the life insurance policy, in essence "replacing" the value of the timberland given to the charitable trust years earlier.

(Note: an additional potential tax benefit to this arrangement is that if the donor lives for three years after the purchase of the policy, the death proceeds would not be included in his estate. If his estate is large enough to owe federal or state estate taxes, this will save estate taxes and essentially increase the inheritance to the children. If an irrevocable life insurance trust (ILIT) were the owner and beneficiary of the policy, the proceeds would not be included in his estate even if he dies within three years. He would make annual gifts to the trust and the trustee would pay the premiums. At his death, the proceeds would be paid to the trust, whereupon trust assets would be distributed to the children, and the trust would terminate.)

One caveat is that this arrangement won't work in every case. Wealth replacement insurance is an option only if the donor's health is good enough and he or she is young enough to make the premiums affordable. As with many planned gifts, its suitability must be determined on a case-by-case basis.

IV. USING PLANNED GIFTS TO MEET DONORS' PERSONAL AND FINANCIAL GOALS

Another way to overcome objections to making a planned gift is to show the donor how a planned gift can be used to not only make a gift but also meet other personal or financial goals the donor might have. The following are certainly not exhaustive examples of how you might do this, but they will give you some ideas of the approaches you can take.

A. Children as Poor Money Managers

In addition to deciding how much they want to leave to their children (or other heirs), a donor must also consider the form of the legacy to heirs. For children who are good financial managers, a lump sum gift or bequest may be entirely appropriate. However, it may be more prudent to give improvident children a stream of income rather than a lump sum. There might also be a child with a disability, who has special needs. There are charitable plans that address these various situations. Here are some examples:

- Improvident Children

A donor couple has two adult daughters whose income never equals their expenses. To provide a subsidy without the temptation of sudden wealth, the donors transfer \$1,000,000 of appreciated stock to a charitable remainder unitrust with a five percent payout rate and name the daughters as income beneficiaries. Each daughter initially receives \$25,000 per year, and to the extent the net return on trust assets exceeds five percent their income will increase. The donors are not taxed on the gain in the stock and they receive an income tax charitable deduction. They do make a taxable gift to the daughters, but it is within the exempted amount, so they don't pay any tax now.

- Special Needs Child

The youngest child of another donor couple, now in his 30s, will always require some degree of care. The donors would like to supplement the financial assistance their son is receiving and make sure this subsidy continues if they predecease him. To accomplish this objective, and also save taxes and provide for your charity, they establish two trusts: a charitable remainder trust and a special needs trust.

Income is paid from the charitable remainder trust to the special needs trust, and the trustee of the special needs trust, in his or her discretion, makes distributions for the needs of the son other than his basic care. In addition to the sense of relief at having secured their son's future, the parents also receive an income tax charitable deduction that reduces taxes.

B. Elderly Parent Needs Assistance

The donor's mother is age 88 and continuing to live on her own. She receives some pension income and social security payments, but it is not quite enough to meet her needs. For the

past few years, the donor has been giving her mother \$500 a month to help make ends meet. Because the money she gives to her mother is post-income tax, the donor must make about \$9,000 in salary to cover these payments (assuming a 33% income tax rate).

An alternative for the donor is to fund an immediate payment gift annuity with your charity, with her mother as the sole annuitant. Based on her age, the gift annuity rate would be 8.4%. If the donor funds a gift annuity for \$75,000, her mother will receive fixed annual annuity payments of \$6,300. After payment of income tax on a small portion of the payment, the net amount to her mother is about \$6,100 per year. The donor receives a tax deduction of \$45,200 in the year of the gift, saving almost \$15,000 in income taxes.

The mother appreciates the feeling of independence she gains by receiving payments from your charity instead of her daughter. The donor makes a generous gift to a cause she cares about, saves income taxes, and has an increase in her spendable income. In addition, the donor (and her mother) gains peace of mind knowing the annuity payments will continue even if something should happen to her.

The donor could have used appreciated securities to establish the gift annuity for her mother and received some additional tax advantage in doing so. However, she would have been taxed on some of the capital gain in the stock because the annuitant is someone other than the donor.

C. Supplement Retirement Income and Assist Children

Another donor couple owns an apartment building, which they would like to sell. However, they have hesitated to do so because they would pay several hundred thousand dollars of tax on the capital gain. Since they have been depreciating the building, part of the capital gain would be taxed at a federal rate of 25 percent rate, possibly 28.8 percent if the healthcare surtax applies. Add any applicable state capital gain tax and the combined capital gain tax rate could exceed thirty percent. The idea of a charitable remainder trust is appealing because the trust, being a tax-exempt entity, could sell the property without being taxed on the gain. Consequently, the entire net proceeds could be reinvested by the trustee. The main reason they have hesitated proceeding with the trust is that they wanted their two children to benefit from this asset, which constitutes a significant portion of their estate. The property is valued at \$2,000,000.

To save taxes, provide for the children, and arrange a future gift, they establish a charitable remainder unitrust and arrange for the income to be paid first to themselves for life and then to the children. The children benefit from the property by receiving payments for the rest of their lives. The parents are now ages 77 and 76, and the children are ages 52 and 50.

Assuming they select a five percent (5%) payout rate, trust income will begin at about \$100,000 and will increase over time if total net return exceeds five percent. In addition there are three tax benefits: an immediate income tax deduction of \$361,060, avoidance of tax on the capital gain when the property is transferred and sold, and potential estate tax savings.

The charity will not receive anything until the death of the children, but the eventual gift will be quite significant.

V. THE IMPORTANCE OF ENSURING THAT CAUTIOUS DONORS WORK WITH THEIR ADVISORS

With all donors, but especially cautious ones and especially if an irrevocable gift is contemplated, a gift planner should encourage consultation with knowledgeable, independent legal and financial professionals. This, too, is an obligation addressed in the *Model Standards of Practice for the Charitable Gift Planner*. While an accomplished gift planner may have ample justification for proposing what appear to be appropriate options under the circumstances, he or she may not be privy to all relevant aspects of a donor's situation, aspects that the donor should be – and, with luck, will be – sharing with advisors. The gift planner's role is ultimately a limited one, and he or she must keep in mind that there are lines that should not be crossed in terms of supplanting the role played by advisors.

Of course, advisors themselves can be cautious, often even more cautious than their clients. Accordingly, to some extent, a gift planner may need to assess the nature and level of caution an advisor is displaying, just the way the planner would with respect to the donor. Responding to that caution can be tricky if the advisor in question will be billing his or her time to the donor. In that event, the gift planner will need to be succinct in pursuing follow-up inquiries and speaking to whatever concerns the advisor is expressing. In addition, an advisor who is compensated based on the value of the assets under his or her management may have a conflict of interest with the donor making a gift that will reduce that value. In meeting this or any other challenge posed by working with a donor's advisor, the gift planner must be careful not to discredit the advisor in the eyes of the donor.

VI. CONCLUSION

While it is prudent for you to bear in mind that overtures made to a donor may meet with some concerns or a cautious reaction, every donor should be approached initially with optimism and enthusiasm about what a gift will be able to accomplish, not only for the charity but also for the donor. If concerns or objections are expressed, it should not always be interpreted as an indication that the donor is never going to make a meaningful gift or that it will be folly to devote any more attention to the donor's situation. Quite often, acknowledging and finding ways to work with a donor's concern or objection will enable efforts to be focused on taking that concern into account as the gift planning process proceeds.

This paper has offered some suggestions and approaches to help you do that and to be successful in as many situations as possible. Even in instances where you conclude that now is not the point at which the donor will make a gift, continued contact with the donor might be advisable because his or her circumstances may improve in the years to come. In the meantime, you can be working with other donors who seem more likely to proceed with consideration of a planned gift, with a little help from you!