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## Shifting the Conversation from Cash to Assets



Date: June 27, 2019

Time: 1:00 – 2:30 Eastern

Presenter: Jeff Lydenberg  
Vice President



## Agenda

- Correlation of asset gifts to overall giving
- Subjective and objective variables and wealth
- Raising the subject of wealth and assets
- Overcoming objections and stalling
- How to say yes to gifts of assets
  - ✓ Risk control strategies
- Accepting gifts of illiquid assets
- Planned gift vehicles appropriate for assets

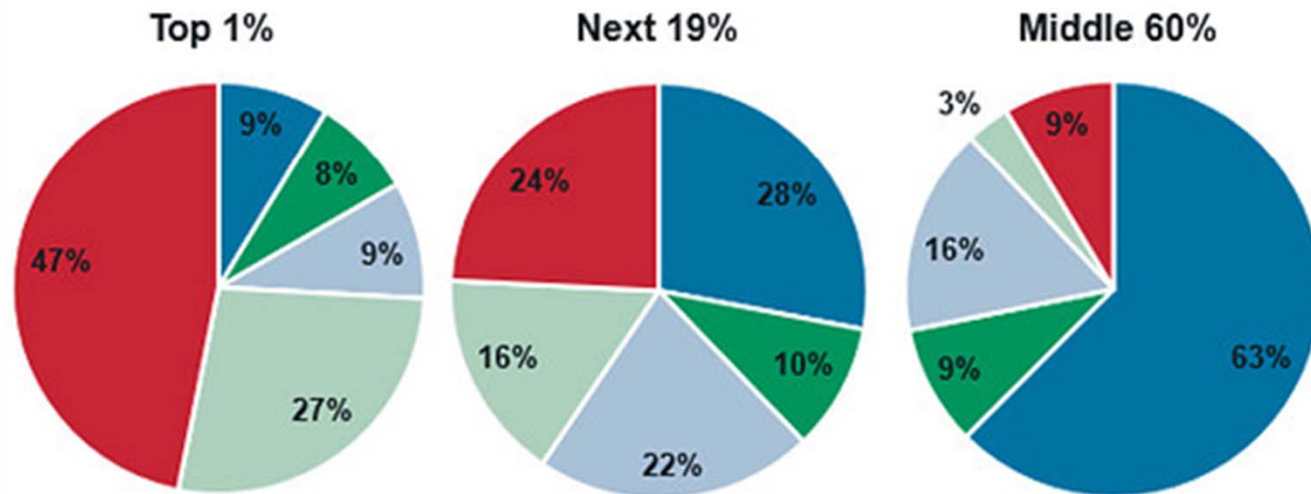


# What Assets Make up Wealth?

## Asset Mix

Composition of household wealth, by asset, for wealthiest 1%, next 19% and middle 60%

- Principal residence
- Pension accounts
- Business equity and other real estate
- Liquid assets and miscellaneous
- Financial securities



Edward Wolff, New York University | WSJ.com



## Who Are the 1%?

- The top 1% of Americans have a household net worth of \$10.3M or more
- The top 1% of Americans have income of \$434,455 or more per year

- Seven Sins

- ✓ Per week:
- ✓ €270,000
- ✓ \$307,031



- There are 1.3M U.S. households that are in the top 1%



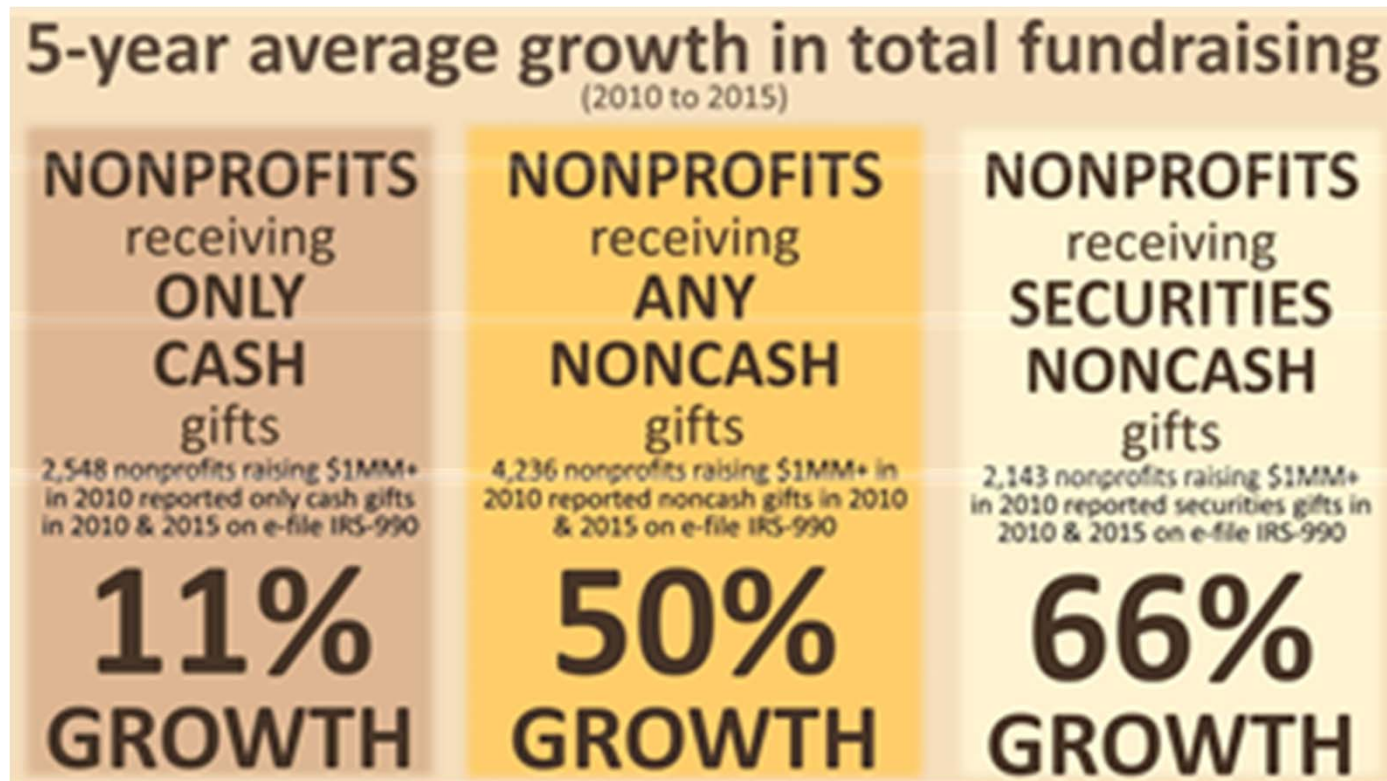
## Why Assets Instead of Cash?

- Data support the conclusion that charities that accept and encourage gifts of assets raise more money than those who receive mostly cash gifts
- Subjective and objective reasons to put assets on the table
  - ✓ Gifts of cash and disposable income represent a tiny percentage of the prosperity of the wealthiest families
  - ✓ Business interests and real estate represent the largest source of resources for the wealthiest families
  - ✓ Gifts of assets are highly tax-efficient



## Gifts of Assets Increases Giving

- A review of over 1M Form 990s shows:





## Why Do Gifts of Assets Increase Giving?

- Subjective variables
  - ✓ **Sudden windfall:** An inheritance, a bonus, a commission
    - Unearned, unexpected dollars increase perception of wealth
  - ✓ **Assets v. Money:** Cash is fungible; associated with disposable income. Assets represents wealth. Personal, almost emotional connection to assets
  - ✓ **Income v. Wealth:** What donor can “afford” to give tied to income and liquid savings. Wealth focuses on donor “capacity” to give



## Why Do Gifts of Assets Increase Giving?

- Objective variables
  - ✓ Capital gain and income taxes
    - ✓ Sale of long term appreciated property taxed at 23.8% for wealthiest Americans
    - ✓ Top ordinary income tax rate is 37%
  - ✓ Gift of appreciated property
    - ✓ Complete avoidance of capital gain tax
    - ✓ Income tax charitable deduction could save 37 cents on the dollar





## Why Do Gifts of Assets Increase Giving?

- Objective variables
  - ✓ Taxation of private equity and hedge funds
    - ✓ Much of the income from these investments are deductible business expenses or carried interest taxed at only 15%
    - ✓ Alternative investments are highly illiquid but represent significant wealth
    - ✓ Sale of these investments subject to tax
    - ✓ Gift of alternative investments avoid heavy taxation



## Talking About Wealth and Assets

- Wealth screens may present an incomplete picture
- Assets held by business organizations not public
- Matters of finance and wealth intensely personal
- How gift is funded often follows solicitation
  - ✓ Negotiation of amount, recognition, funding





## Shifting the Conversation

- High wage earners/Big spenders = Low wealth
- Consider cash flow to maintain lifestyle
- Do you have an estate tax problem?
  - ✓ Yes? Net worth at least \$11.4M+ or \$22.8M+
- ❖ Snowmass Village, Aspen
- ❖ Christmas week 2019
- ❖ 6 guests
- ❖ \$24,735.18 for the week





## Shifting the Conversation

- Signals to raise topic of assets
  - ✓ Multiple financial and personal obligations
  - ✓ Need for income for lifestyle
  - ✓ Outliving income
  - ✓ Wealth is illiquid
  - ✓ Gift of assets in context of complex planning
  - ✓ Only considering a gift of portion of donor's wealth



## Overcoming Objections and Stalling

- Solicited amount is “too much”
  - ✓ We can help you use your assets and investments to make gift
- We’re over committed
  - ✓ Not focused on disposable income
  - ✓ Tapping into wealth can meet multiple financial, personal and philanthropic objectives



## Overcoming Objections and Stalling

- A gift of that size would reduce needed income
  - ✓ Gifts can be structured to pay income and reduce taxes
- Worried about economy, recession, and tariffs
  - ✓ A gift can make fixed, guaranteed payments without risk of market fluctuation
- Let me think about it
  - ✓ What are the concerns you need to consider



## What to Do When the Donor Says Yes

- Senior leadership and business office often resistant to anything besides cash and securities
- Clear gift policies requiring due diligence, risk control strategies, and institutional buy-in
- Charity doesn't have to do it all!
  - ✓ Development and business office don't have to manage
  - ✓ Financial services partner can manage many assets
  - ✓ Real estate management firms will handle entire process



## Risk Control Strategies

- Donor Advised Funds
  - ✓ DAFs affiliated with financial services firms experienced in accepting complex, illiquid assets
  - ✓ Net proceeds on sale of asset goes into donor's DAF
  - ✓ Minimum gift amounts higher for unusual assets
  - ✓ Example: Vanguard DAF minimums
    - ✓ \$25,000 if funded with cash or securities
    - ✓ \$750,000 if funded with closely held businesses, private equity, and hedge funds





## Risk Control Strategies

- Single Member Limited Liability Company (LLC)
  - ✓ Charity creates and is only member of the LLC
  - ✓ LLC does not need to apply for tax-exempt status or file Form 990
  - ✓ Gift to LLC is same as gift to charity
  - ✓ Liability for claims arising from an asset limited to the LLC
  - ✓ LLC liquidates asset and distributes to charity
  - ✓ Charity insulated from claims against LLC



## Gifts of Complex/Illiquid Assets

- Cash and securities from non-U.S. donor
  - ✓ Can run afoul of currency and banking regulation in U.S. and donor's home country
  - ✓ Chinese citizen limited to transfer equivalent of \$50K per year out of China
- Real estate
  - ✓ Non-residential real estate likely held by business entity
  - ✓ Does charity want to be shareholder or property owner?
  - ✓ Co-owners? Management agreements? Mortgages?



## Gifts of Complex/Illiquid Assets

- Closely held businesses
  - ✓ C corporation
  - ✓ S corporation
  - ✓ Limited liability corporation
  - ✓ Limited partnership
- What is the exit strategy?
  - ✓ Can business make a gift of assets instead?
  - ✓ How quickly and under what conditions can ownership be liquidated?



## Gifts of Complex/Illiquid Assets

- C corporations
  - ✓ easiest business asset with least risk
  - ✓ What is plan to convert to cash? Stock redemption?
- S corporations
  - ✓ Single largest source of wealth in U.S.
  - ✓ Can subject charity shareholder to UBIT
  - ✓ Consider gift of corporate assets instead
- Pass-through entities
  - ✓ Greatest flexibility in how to structure
  - ✓ Not subject to UBIT as a passive investment



## Gifts of Complex/Illiquid Assets

- Gifts of Private Equity and Hedge Funds
  - ✓ Partner with experienced financial services firm
  - ✓ May be challenge for donor to get appraisal
  - ✓ General partner may need to approve charitable gifts of units of private equity and hedge funds
  - ✓ Careful tax planning required to avoid UBIT to charity
    - These investments raise money by borrowing
    - Debt financed income can generate UBIT to charity



## Gifts of Complex/Illiquid Assets

- Qualified Charitable Distribution (QCD) (a.k.a. charitable IRA rollover)
  - ✓ Must be over 70 1/2 and limited to \$100k per year
  - ✓ Equivalent to income tax charitable deduction (but not deductible)
  - ✓ Must otherwise qualify for 100% deduction
  - ✓ Can't be used for tickets, auction items, or if more than minimal quid pro quo benefits
  - ✓ Can't be made to supporting org or private foundation



## Gifts of Complex/Illiquid Assets

- Beneficiary of IRA at death
  - ✓ Simple for donor, file new beneficiary designation
  - ✓ Tax-efficient gift, no income tax on distribution to charity
  - ✓ IRA divisible into interests for multiple charities and heirs
- Processing gifts from IRAs after death
  - ✓ Get ready, process is complex, intrusive, and lengthy
  - ✓ Consider advising donor to make DAF beneficiary of IRA



## Cryptocurrency

- Educate yourself
- Bitcoin is only one of hundreds of virtual currencies but most popular
- Unresolved legal, tax, and regulatory issues
- Treated as gift of property
  - ✓ Appraisal required if claimed value over \$5,000
  - ✓ Short term v. long term







## Gifts of Complex/Illiquid Assets

- Don't accept cryptocurrency until infrastructure in place to accept (or not!)
  - ✓ See paper for resources
  - ✓ Risk is fluctuation in value, sell immediately like stock
- Consider reputational risk
  - ✓ Know your donor
  - ✓ How and why are they trading in virtual currency
  - ✓ Associated with illegal activity



## Gift Vehicles for Complex/Illiquid Assets

- Outright gifts of complex/illiquid assets often the best outcome
  - ✓ High net worth donor needs deduction and tax avoidance more than any other benefit
- Vehicles to consider:
  - ✓ Charitable remainder unitrust with flip provision
  - ✓ Retained life estate
  - ✓ Bargain sale



## Gift Vehicles for Complex/Illiquid Assets

### Charitable remainder unitrust with flip provision

- Vehicle of choice for illiquid assets
- Pays lesser of net income or unitrust amount until sale of donated property
- Gives trustee time to dispose of property
- Taxes generated from sale of property trapped inside CRUT
  - ✓ Beneficiary taxed on income on WIFO basis
- Starting in year after sale of property, CRUT pays a percentage of value as revalued annually



## Gift Vehicles for Complex/Illiquid Assets

### Retained Life Estate

- Donor may contribute personal residence or farm
- Retains right to live in home
- Income tax deduction at time of gift
- Prototype donor
  - ✓ High net worth, multiple homes, vacation properties
  - ✓ Need not be primary residence
  - ✓ Can generate significant income tax charitable deduction



## Bargain Sale

### Bargain Sale

- Donor sells property to charity at a bargain price
- Donor gets cash, reduction in gains and income tax
- Zero tax solution
  - ✓ \$5M property with \$750k basis
  - ✓ Sells to charity for \$3.2M
  - ✓ Income tax savings: \$653,494
  - ✓ Capital gain tax due: \$653,494
  - ✓ Net tax due from donor: \$0
  - ✓ Net gift to charity:  $\$5M - \$3.2M = \$1.8M$



# Questions?





## Still Have a Question?

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