

ON THE STEPS OF ETERNITY

ORCHESTRATING GIFT AGREEMENTS WITH VALUING REVOCABLE AND IRREVOCABLE GIFTS

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Presenter



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Gift Planning
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- Provides strategic leadership to OSU Foundation's gift planning program
- Oversees the staff that assist donors in making deferred, assets-based or complex gifts to the university
- Prior to current role, served for 18 years at Georgetown University where he oversaw university-wide gift planning efforts resulting in more than \$500 million of gift commitments and receipts
- Served as Director of Planned Giving at the National Jewish Health
- National Association of Charitable Gift Planners president in 2000
- Past president and board member of the National Capital Gift Planning Council of Greater Washington
- Founding board member of the Colorado Planned Giving RoundTable
- Serves on the editorial advisory board of Planned Giving Today

Gift Agreements and Statements of Intent

- **What's the difference?**
- **For the purpose of this presentation, gift agreements and statements of intent will be used interchangeably**
- **Court Case from Arizona December, 1996**

Private Letter Ruling 9714010 and Statements of Intent

- **Creation Of Remainder Trust To Satisfy Irrevocable Pledge Is Self-Dealing; Earlier Ruling Revoked:**
- **The Service has ruled that contributions to a charitable trust, in partial satisfaction of an individual's and trust's irrevocable pledge to an educational institution, is self-dealing under reg. section 53.4941(d)-2(f)(1).**

A Volcano of Questions Erupted

- **How Can We Count Planned Gifts?**
- **How Can We Recognize Planned Gifts?**
- **What About FASB...GAAP etc?**
- **What Should We Do With Existing Gift Agreements for Planned Gifts?**



Statement of Intent

➤ *Endowed Fund Estate Gift - Statement of Intent*

- Taking into account my interest in Oregon State University as a faculty member at Oregon State University, I hereby express my **intent** to contribute to the Oregon State University Foundation 5% of the total value of my estate, which will result in a gift valued at approximately \$200,000. A copy of the relevant portion of my estate planning documents is attached to this statement of intent.
- Although I intend to make the gift described above, this document shall be construed only as a **statement of my intent** and should not be construed as my legal obligation, my heirs' or my estate's legal obligation.

Charitable Gift Agreements and Statements of Intent



Gift Agreements and Statements of Intent

- Gift agreements are the cornerstone of full disclosure between the donor and the donee.
- For current, outright gifts the gift agreement can simply delineate the donor's and donee's understanding of the use of the gift.

Gift Agreements and Statements of Intent

- ❖ *Four critical components are common to gift agreements for planned gifts*
1. An introductory statement that establishes the background of the gift and the donor's connection with the institution (a helpful reference, should a sizeable gift prove to be a total surprise to family members);
 2. A brief description of the program the gift is supporting, including any selection criteria and a statement confirming that the program is in keeping with the University's mission and tax-exempt status;

Gift Agreements and Statements of Intent

❖ *Four critical components are common to gift agreements for planned gifts*

3. Funding information that allows for additional gifts, states that the fund will not be established until the gifts reach the amount then required for that type of fund, and says what happens if the gift falls short of the future funding level:

- I understand and agree that all gifts and contributions received for credit to the Fund shall be held until the Fund reaches the amount then required to establish a named, endowed fund. I understand and agree that all gifts and contributions received for credit to the Fund, shall be held until the Fund reaches the amount then required to establish a named, endowed fund. Beginning then, an annual allocation will be made for the purposes described above in accordance with then current spending policy..

I understand and agree that the investments of this Fund shall be governed by the investment policies...

Gift Agreements and Statements of Intent

❖ *Four critical components are common to gift agreements for planned gifts*

4. *Cy pres*

Unlike many Latin-based legal phrases, *cy pres* is derived from the French “*cy pres comme possible*” which in translation means “as close as possible.”

“The doctrine of *cy pres* exists ‘to permit the main purpose of the donor of a charitable trust to be carried out as nearly as possible where it cannot be done to the letter.’” It allows courts to implement a donor’s general charitable intention when changes in circumstances do not allow the charitable bequest to be used according to the specific instructions of the donor’s will.

In order to utilize *cy pres* a court must find that “it is or becomes impossible or impracticable or illegal to carry out the particular purpose, and...the settlor manifested a more general intention to devote the property to charitable purpose...”

Cy pres was traditionally limited to charitable trusts, but it is now being applied “to absolute gifts to charitable corporations or other organizations.”

Gift Agreements and Statements of Intent

❖ *Four critical components are common to gift agreements for planned gifts*

4. *Cy pres* language that enables the University to use the gift for a related purpose if it becomes impossible or impractical to use the gift for the intended purpose.

I understand and agree that, should it ever become impossible or impractical to use the gift for the purpose specified in this agreement, the Board of Charity, in their discretion, may distribute or use the net income or may devote the entire income and principal of the Fund to the support of any other uses most similar to my original interest and intent.

Gift Agreements and Statements of Intent

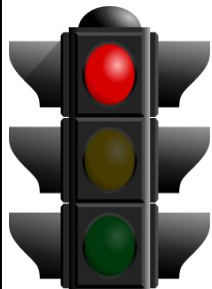
- How do development officers employ gift agreements?
- How much is your bequest and may I have a copy of your records...?
- Full service approach to donors.
- What do you want your gift to accomplish?

Bequest Conversations 101



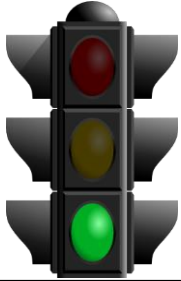
- How NOT to Approach Bequest Conversations
- So we are in your will...how much?

WORDS MATTER



- Count your Estate Gift
- Document your Estate Gift
- Record your Estate Gift
- Book your Estate Gift

WORDS MATTER



- Recognize Your Estate Gift
- Recognize the FULL Extent of your Philanthropy
- Celebrate your Estate Gift
- Aw Shucks...

Focus on Gift Designation and Impact

- Understanding your role: Helping the donor explore meaningful gift opportunities
 - Keeping the donor talking
 - Keeping the conversation moving forward
 - Reflecting the donor's thoughts
 - Building a clear picture of impact
 - Outlining action steps
 - Facilitating closure

Counting, Accounting, and Valuation

- **Counting:** Donor Focused
- **Accounting:** Financial, Internal Focused
- **Valuation:** Gift Focused
- **Recognition:** Donor Focused

TIME FOR A FEW QUESTIONS

Gift Counting Policies

- Majority of major universities “count” “bequest intentions.”
- Most institutions with a gift planning program realize 20% to 40% from planned gifts.
- 80% to 90% of planned gifts are simple bequest intentions.
- Majority of major universities “count” CRTs and CGAs at face value.

It's Not About the Numbers...



It's About Philanthropy



Gifts that are being put in place now to fund future needs present special challenges.



Gift Agreements and Statements of Intent

- Gifts that are being put in place now, but funded later, present special challenges.
- Many institutions have their favorite horror stories about gifts from trusts or bequests that are not sufficient to fund whatever the donor had intended to fund—and have even resulted in legal action.
- It is truly in the donor's best interest for the donor and their advisor to have a conversation with the charity and to reach an understanding about the gift and required minimums—and about what the donor wants the charity to do if the gift is not enough to fund the anticipated program when the time comes.

Survey

❖ *Four critical components are common to gift agreements for planned gifts*

3. Funding information:

TIME FOR A QUESTION

Gift Agreements and Statements of Intent

❖ *Four critical components are common to gift agreements for planned gifts*

3. Funding information that allows for additional gifts, states that the fund will not be established until the gifts reach the amount then required for that type of fund, and says what happens if the gift falls short of the future funding level:

I understand and agree that all gifts and contributions received for credit to the Fund shall be held until the Fund reaches the **amount then required** to established a named, endowed scholarship fund. I agree that if the Fund does not reach the then required amount for a named, endowed scholarship fund within two years of the date of its initial funding that the Fund may remain in whole or in part as an endowed fund or the Fund may be distributed or be expended in part or full consistent, to the greatest degree possible, with my wishes as described above.

Gift Agreements and Statements of Intent

❖ *Four critical components are common to gift agreements for planned gifts*

3. What happens if the gift falls short of the future funding level:

Recommend: **Cascading Language** in the event the fund does not meet the then current amount the donor can delineate an alternative use, perhaps for an endowed fund with a smaller required minimum amount.

If not enough for THIS then THAT...

Does the Donor's Gift Meet Endowment or Current or Future Funding Requirements?



Valuing Planned Gifts and Commitments

- FASB provides rules for the *accounting* of planned gifts.
- CASE and NACGP provide standards for *counting* gifts.
- U.S. Treasury Regulations dictate the methodology for determining the charitable *deduction* for tax purposes.

Valuing Planned Gifts and Commitments

- Accounting, counting and deduction measurements do not truly reflect the *value* a planned gift provides to a charitable organization when the gift is finally used to accomplish its charitable mission.
- *Valuation Standards for Charitable Planned Gifts*
National Association of Charitable Gift Planners;
Updated 6/11

IRS Methodology: Overview

The IRS valuation methodology for planned gifts is a two-step process.

1. Determine the present value of the income interest.
2. Subtract the present value of the income interest from the value of the gift transfer.

IRS Methodology

Why Not Just Use the Charitable Deduction?

It does not measure the full value of the gift to the charitable organization.

Gift Valuation Methodology: Overview

The valuation methodology for planned gifts is a two-step process.

- 1. Determine the nominal value of the gift at its projected termination.**
- 2. Discount the total nominal future value back to the present value.**

Gift Valuation Methodology

- 1. The first computation is to estimate the nominal future value of the gift.**
- 2. The second computation is to discount that future value to today's dollars.**

Five Variables affect the future value of a gift

- 1. Amount contributed**
- 2. Investment returns**
- 3. Costs**
- 4. Payments**
- 5. Expected term of the gift**

Five Variables affect the future value of a gift

1. Amount contributed
2. Investment returns

Project expected returns based on the charitable organization's portfolio design and return expectations. This is the most accurate method for projecting future results.

Option 1: Organization-Specific Returns

Project expected returns based on the charitable organization's portfolio design and return expectations.

This is the most accurate method for projecting future results.

Investment returns

- Once you have identified the expected return for each equity and fixed income asset class, weight the expected returns by the weight of each asset class in the portfolio to calculate the overall expected return.

Investment returns: example:

- Assume a portfolio of 60% stock, 40% bond mix
- Assume that the average return of your equities is 9.75% and the return of your bond class assets are 3.4%.

Investment returns: example:

$(.6 \times .0975) + (.4 \times .034) = \text{Investment Return}$

$.0585 + .0136 = .0721 \text{ or } 7.21\%$

Five Variables affect the future value of a gift

3. Costs (trustee, investment management, administrative, etc.)
4. Payments (CRT or CGA payout rate, IRA withdrawal rate, etc)
5. Expected term of the gift (Mortality Tables)

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May 8, 2018

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Summary of Benefits

(Present Value)

ASSUMPTIONS:

Projection begins in 2018 and runs for 14 years.
Measuring Rate is 7% per year.
Original Principal is \$100,000.
Donor income tax bracket is 40.8%, 37% for tax savings, and 23.8% for capital gains.
Beneficiary income tax bracket is 40.8%, 23.8% for capital gains.

	Charitable Unitrust
	5%
Gross Principal	\$100,000
Average Annual Payment	\$6,102
Charitable Deduction	\$26,616
Income Tax Savings	\$20,578
Income	2%
Capital Appreciation	6%
Self-Asses in First Year	Yes
PRESENT VALUE AT 3.2%:	
Total Before-Tax Benefit To Payment Recipient	\$66,982
Benefit to OSUF	\$97,321
Total Benefit	\$164,302

Life Income Projections: IRS Discount Rate is 3.2%
These calculations are for illustrative purposes only and should not be considered legal, accounting, or other professional advice. Your actual benefits may vary depending on several factors, including the timing of your gift.

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Detailed Cash Flow Analysis

(Present Value)

ASSUMPTIONS:

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Original Principal is \$100,000.
Donor income tax bracket is 40.8%, 37% for tax savings, and 23.8% for capital gains.
Beneficiary income tax bracket is 40.8%, 23.8% for capital gains.

5% Charitable Unitrust						
YR	Year-End Principal	Capital Apprec. (6%)	Income (2%)	Before-Tax Payments	Tax-Free Portion	After-Tax Payments
2018	\$100,000					
2019	103,000	\$6,000	\$2,000	\$5,000	\$2,830	\$4,144
2020	106,099	6,180	2,080	5,100	2,790	4,229
2021	109,273	6,365	2,122	5,304	2,672	4,317
2022	112,551	6,556	2,185	5,484	2,597	4,410
2023	115,927	6,753	2,251	5,628	2,523	4,506
2024	119,405	6,956	2,319	5,795	2,452	4,606
2025	122,987	7,164	2,388	5,970	2,382	4,710
2026	126,677	7,379	2,459	6,149	2,315	4,819
2027	130,477	7,601	2,534	6,333	2,249	4,931
2028	134,392	7,829	2,610	6,524	2,186	5,048
2029	138,423	8,063	2,688	6,720	2,124	5,169
2030	142,575	8,305	2,768	6,921	2,064	5,294
2031	146,853	8,555	2,852	7,128	2,005	5,425
2032	151,259	8,811	2,937	7,343	1,949	5,560
TOT	\$151,259	\$102,518	\$34,173	\$85,432	\$33,098	\$67,167
PV (3.2%)				\$66,982	\$26,731	\$52,847

Life Income Projections: IRS Discount Rate is 3.2%
These calculations are for illustrative purposes only and should not be considered legal, accounting, or other professional advice. Your actual benefits may vary depending on several factors, including the timing of your gift.

CASE 1

- Mrs. Anspach: age 50
- \$100,000 gift
- 5% CRUT
- 50% present value?

CASE 1

Projected Future Value:
\$265,234

NACGP Present Value:
\$93,799



CASE 2

Mr. White, age 82, informs you that:

He has put a provision in his will for a specific \$500,000 bequest for a named endowed fund...

Life Expectancy: 8 years



CASE 2

\$500,000... with no growth...
PRESENT VALUE AT 3.4%=\$388,627





Q&A

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Additional Questions

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Thank you!