

TARGETING (AND RECEIVING!) CHARITABLE CONTRIBUTIONS – STRATEGIC CONSIDERATIONS FOR YOUR ORGANIZATION

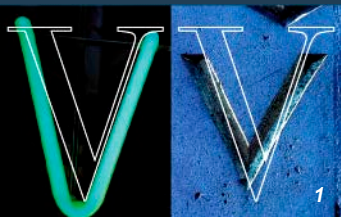
May 12, 2016

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Agenda

- Federal and State Estate and Gift Tax Rules
- Charitable Planning Opportunities
- Complying With (or Deviating From) Donor Intent
- Gift Acceptance Policies



A circular image showing the exterior of the United States Supreme Court building, featuring a prominent portico with columns and a pediment. The text "FEDERAL AND STATE ESTATE AND GIFT TAX RULES" is overlaid in white, bold, sans-serif font.

**FEDERAL AND STATE
ESTATE AND GIFT TAX
RULES**



Exemptions and Tax Rates Under 2010/2012 Acts

Calendar Year	Estate Tax Exemption	Gift Tax Exemption	GST Tax Exemption	Highest Estate, Gift, and GST Tax Rate
2015	\$5.43 million	\$5.43 million	\$5.43 million	40%
2016	\$5.45 million*	\$5.45 million*	\$5.45 million	40%

*Indexed for inflation so may increase



Federal Estate Tax

- Taxed on Worldwide Assets
- \$5,450,000 Exemption in 2016, with unused amount “portable” to surviving spouse
- Unlimited Tax-Free Transfers to U.S. Charities
- Unlimited Tax-Free Transfers to Spouse (if U.S. citizen)



Federal Gift Tax Exemptions and Exclusions

- \$5.45 Million Lifetime Exemption

PLUS

- \$14,000 Annual Exclusion Gifts
- Unlimited Payments of Medical and Educational Expenses Directly to Provider
- Unlimited Tax-Free Transfers to U.S. Charities
- Unlimited Tax-Free Transfers to Spouse (if U.S. citizen)



State Estate Taxes

- 18 States and DC = CT, DE, HI, IL, IA, KY, ME, MD, MA, MN, NE, NJ, NY, PA, RI, TN, VT and WA
- State Estate Tax Deductible Against Federal Estate Tax
- Highest State Estate Tax Rate = 20%
- Vacation Home in Another State May Be Subject to that State's Estate Tax



A blue pen is shown drawing a detailed architectural sketch of a two-story house with a tiled roof, multiple windows, and a chimney. The drawing is on a scroll of paper that is partially unrolled. The background is a light blue gradient.

CHARITABLE PLANNING OPPORTUNITIES



Charitable Tax Planning

- Preliminary Questions
- Cash Gifts
- Gifts of Other Assets
- Life Insurance
- Retirement Plan Assets
- Split-Interest Gifts



Preliminary Questions

- What Does Donor Wish to Accomplish with Donation?
- How Much?
- When Does Donor Want to Make Donation
- When Can Charity Use Donation?



Cash Gifts

- Simple
- Subject to 50% AGI limitation for income tax deduction
- No limitation at death for estate tax deduction



Gifts of Other Assets

- Give Appreciated Stock not Cash
 - Avoid Recognizing Gain
 - Charitable Deduction for Fair Market Value
- Subject to 30% AGI limitation for income tax deduction
- No limitation at death for estate tax deduction – full fair market value



Life Insurance

- Death benefit of life insurance subject to estate tax if
 - Policy owned by insured
 - Policy owned by another but insured has “incident of ownership”
- Designate organization as beneficiary – full estate tax deduction



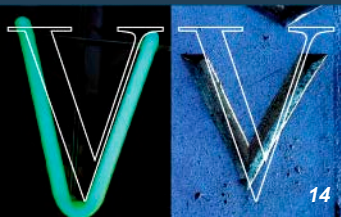
Retirement Plan Benefits

- 401k plan, IRA, pension plan, profit-sharing plan, etc.
- Deferred income plans so subject to income tax when distributed to beneficiary
- Bequests of Retirement Plans to Charity
 - Charity is Tax Exempt
 - Reduced After-tax “Cost” to Family Members

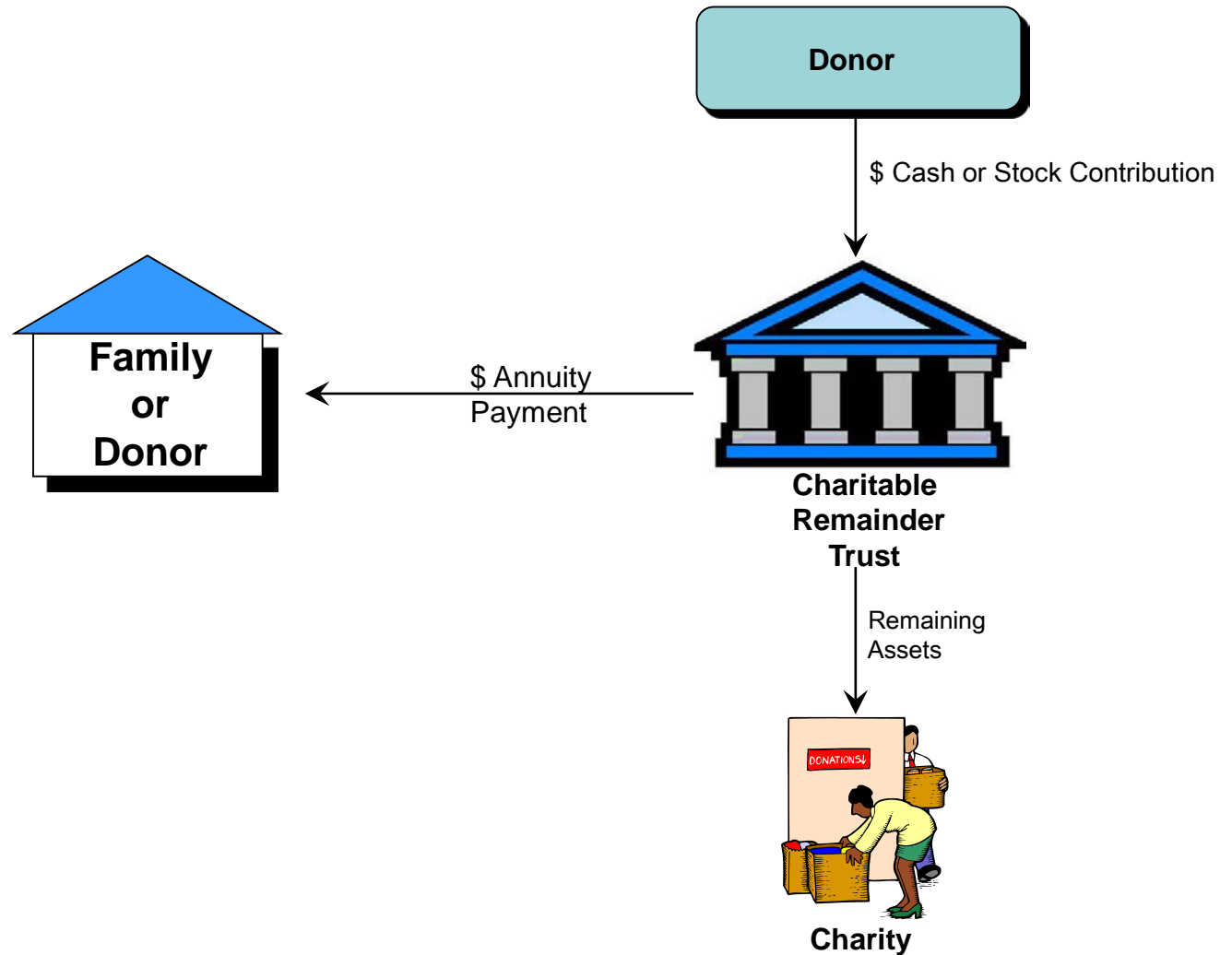


Split-Interest Gifts

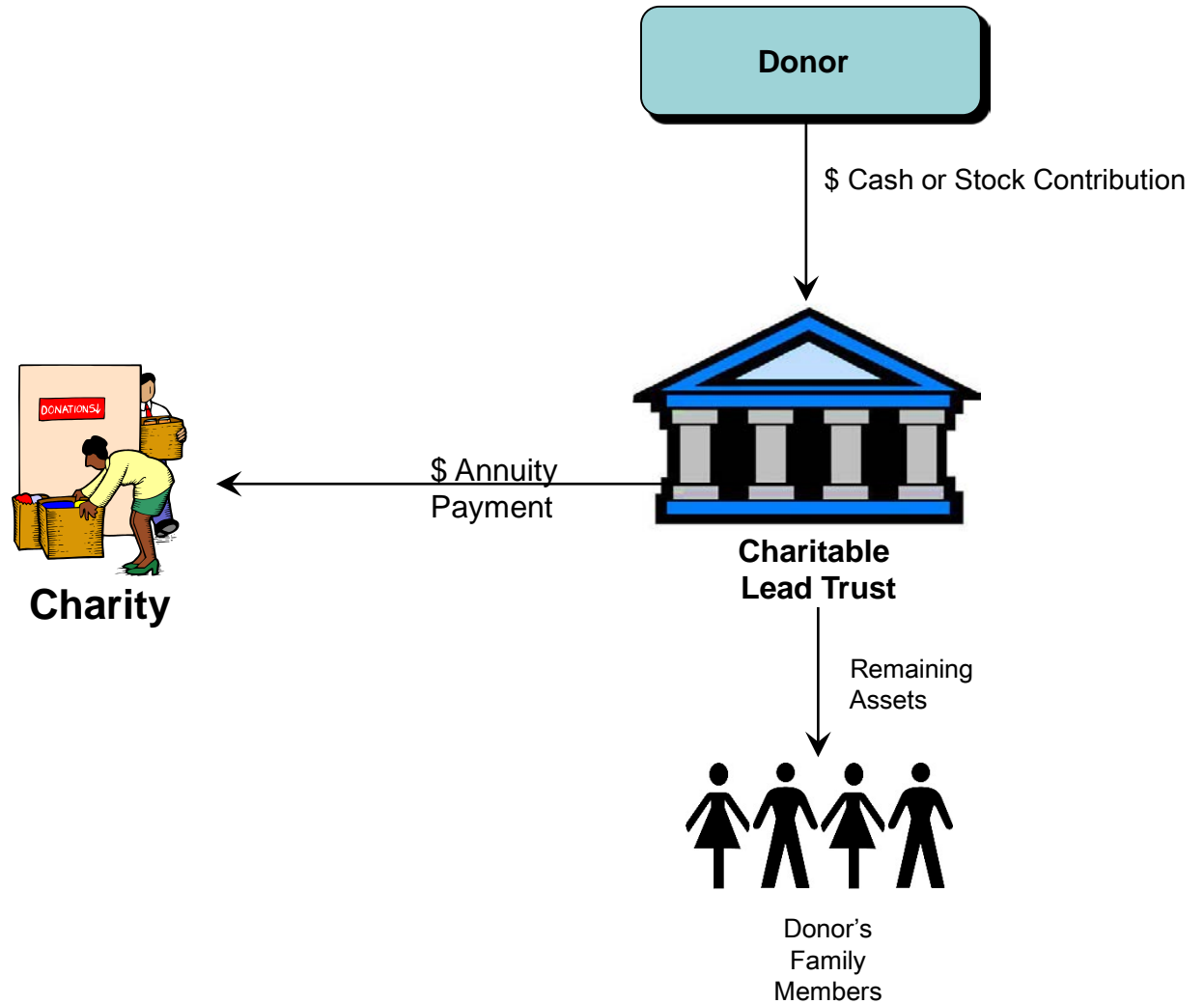
- Charitable Remainder Trusts
- Charitable Lead Trusts
- Charitable Annuities



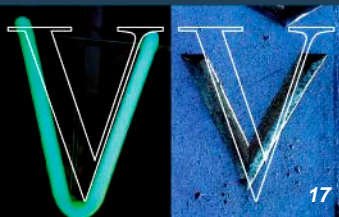
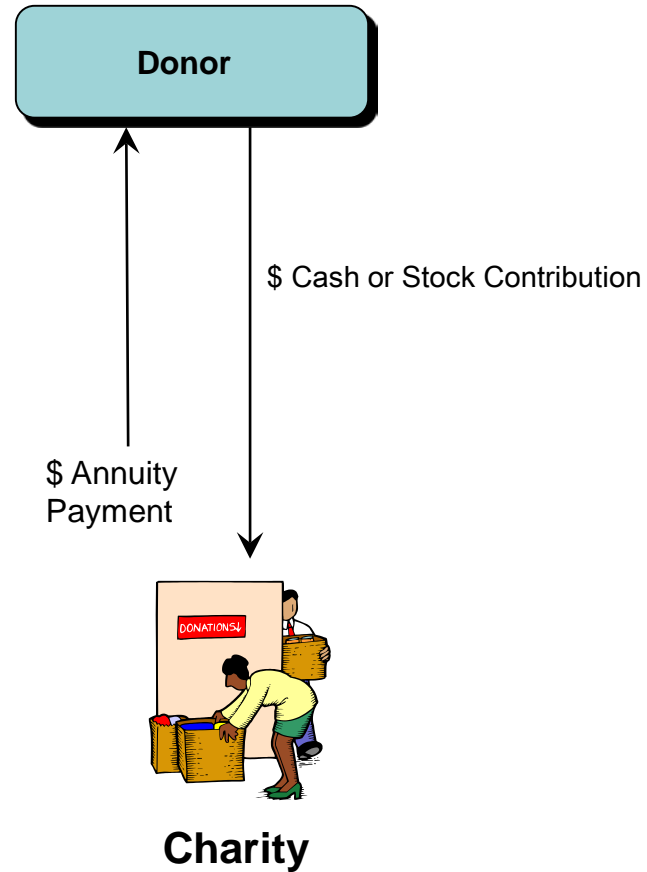
Charitable Remainder Trust



Charitable Lead Trust



Charitable Gift Annuity





Complying With (or Deviating From) Donor Intent: Recent Developments for Nonprofits

Common Gift Restrictions

- Restricted purpose of gift
- Investment restrictions
- Holding period: Ability to sell or transfer gift
- Endowment : Invasion of principal
- Naming



Some Basic Concerns

- Availability of charitable deduction if restrictions are too severe
- Accounting issues
- Impact of restriction on tax-exempt status
- Getting “sideways” with the donor
- Potential embarrassment associated with restriction



Sample Donor Intent Cases



- University sued for misusing gift to prepare graduate students for careers in foreign service
- University dispute over development of farm property
- Public school system: Sale of property in deviation from terms of a 350 year-old charitable trust that provided “for euer . . . sayd land not to bee sould nor wasted.”
- Animal shelter case: Deviating from the stated purpose of a gift
- Museum no longer able to comply with the restrictions imposed by the donor of the displayed artwork



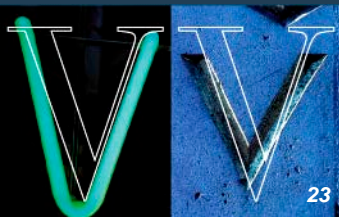
Uniform Prudent Management of Institutional Funds Act (UPMIFA)

- UPMIFA permits deviation (in management, investment or purpose)
 - With Donor consent
 - With court and Attorney General approval
 - UPMIFA permits prudent “appropriation” of an Endowment Fund



Lessons Learned

- Gift agreements are an important tool to protect both the interests of the charity and the donor
- Leave room for flexibility
- Consider the possibility for changed circumstances

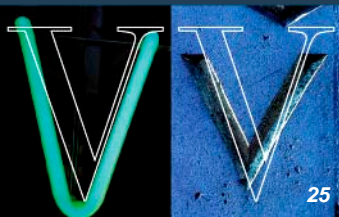




Gift Acceptance Policies

Topics for Discussion

- Gift acceptance policies
- Internal governance issues
- Specific types of gifted property



Gift Acceptance Policies

- Establish prospectively to guide the organization in soliciting, procuring, and “closing” gifts
- Policy should govern both acceptance and disposition of gifted property
 - In many instances, the true “value” of a gift is in the proceeds that arise upon disposition



General Comments

- No specific rules or laws directly on point
- Gift policies are not required. Rather, part of “best practices.”
- Policy should “fit” the organization and reflect a workable and helpful process



Sample Structure of Gift Policy

- Statement of mission, values, guiding principles, and organizational priorities
- Overview of different types of gifts and criteria for acceptance and disposition
- Procedural and administrative matters



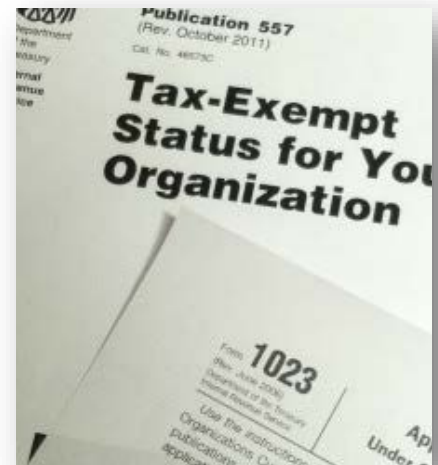
Internal Governance

- Gift Acceptance Committee
 - Composition: Just directors, or other professionals and volunteers too?
 - Authority: Able to take action on behalf of the organization, or in an advisory capacity to the Board?
 - Ensure consistency with organization's bylaws
 - Signature authority?



Internal Governance (cont'd.)

- Tax considerations:
 - Any effect on Section 501(c)(3) status?
 - Private foundations: Ensure compliance with Chapter 42 rules
 - Unrelated business income tax (UBIT) implications?
 - Acceptance of interests in LLCs or other pass-through entities
 - S corporation stock



Specific Types of Gifted Property

- Cash
- Securities – marketable versus non-marketable
 - UBIT
 - Limitations on disposition
- Real estate
 - Due diligence: Phase I environmental survey; appraisal
 - Consider use of single-member LLC to accept donation
- Tangible personal property
 - Expected use
 - Anticipated costs

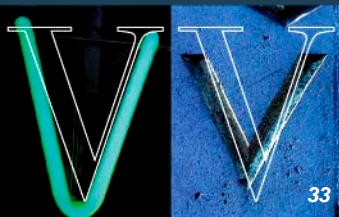


Specific Types of Gifted Property (cont'd.)

- Intellectual property
- Conservation easements and façade easements
- Gifts of property with expected disposition within three years



FINAL THOUGHTS



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Thank You.

