Incorporating Philanthropy into the Estate Planning Process

By Mollie Bunis

Americans have historically been among the most charitably inclined in the world. With giving close to USD300 billion in 2010 (according to Giving USA 2011) it is not surprising that philanthropic planning has become an integral aspect of many professional advisory practices, and as a professional service in its own right, in the United States. In fact, as noted in the 2011Merrill-Lynch Cap Gemini World Wealth Report, there is a rising demand for philanthropy-related advisory services among high net worth individuals—who increasingly view philanthropic choices as inextricably linked to broader planning initiatives.

This offers significant opportunity to estate planning attorneys in particular to enrich their practices and simultaneously provide a valuable service to their clients. According to the Bank of America Merrill Lynch 2010 Study of High Net Worth Philanthropy, more than 46% of wealthy households have a will with at least one specific charitable provision and nearly 12% more will consider establishing a charitable provision in their will in the next few years. Additionally, the Giving USA 2011 Report states that charitable bequests rose an estimated 18.8% in 2010. In 2009, the last year for which statistics are available from the IRS, approximately 1 in 5 estates claimed a deduction for a charitable bequest, with estates of $20 million or more representing 58% of the total.

Estate planners who help their clients become more strategic about philanthropy in their legacy planning strengthen relationships with clients and their heirs and significantly increase the likelihood that their clients' charitable distributions will align with their interests and be more effective. Whether creating a new estate plan or revisiting an existing one, when discussing philanthropy there are certain topics advisors should consider incorporating into every conversation.

Time Horizons

The timing of a client's distribution of charitable assets influences the execution of his or her charitable plan. By having a meaningful discussion about time horizons for giving, advisors help ensure that clients have the proper charitable vehicle and infrastructure in place to achieve their goals. When do clients want to donate their money or assets? Do they want to give away their money during their lifetimes, after death, or both? Do they want resources to be used immediately or is a slow disbursal of funds in perpetuity preferable?

When making decisions about time horizon, donors must consider the nature of the public issue they seek to address with their giving and the significance and permanence they attach to their charitable intent. If donors don't have heirs and feel an urgency about the causes that are most important to them, then a "giving while living" strategy might be most appropriate for their situation. If a donor is interested in making a permanent mark on society and has chosen an issue that will likely be present for decades to come then opting for perpetuity may be called for. If clients prefer for their philanthropic activities to continue after death, then advisors should work with them to draft appropriate succession plans and stewardship requirements that clearly outline the process for carrying out their wishes.

Advisors can also help clients link their legacy giving with their lifetime philanthropy, building continuity between the charitable provisions outlined in their estate plans and the lifetime giving in which they may be engaged. For instance, if the ultimate legacy goal is to ensure that a cherished nonprofit organization is poised to scale-up its operations and launch additional locations across the world utilizing a bequest, then it behooves the donor, during his or her lifetime, to work closely with that organization to synergistically align lifetime support with legacy support. In so doing, the client will have greater assurances that the legacy gift will be “put to work” in a fashion that will achieve his or her desired goals and that of the nonprofit partner.

Donor Intent

When establishing charitable giving vehicles with perpetual lifespans and/or when pursuing endowment gifts, it is important to consider how intentions will be interpreted over time and to consider the impact of any conditions that are placed on gifts and to know when to be specific and when to be flexible. The challenge is to protect a donor’s interests while at the same time avoid unnecessary or unrealistic constraints that undermine the recipient institution’s ability to carry out its mission. One need only to look at the many high-profile legal disputes in recent history, such as the Robertson family suit against Princeton University over a gift made 48 years prior or litigation connected with the Barnes Foundation of Philadelphia over carrying out its donor’s philanthropic provisions, to see how difficult it is to sustain donor intent over time.

Advisors should help donors understand the tension between maintaining control of a mission and changing circumstances over time and encourage clients to pay close attention to how they frame their philanthropic gifts, what legacy they wish to leave and how all of this is documented. To help clients ensure that their wishes and desires are followed when they are no longer an active participant in the process of oversight advisors can:

• Define what donors hope to accomplish by attaching specific conditions to a gift. It is important for donors to remember that the future success of any organization depends, in part, on their ability to be flexible as circumstances change. Conditions placed on gifts are an important tool for donors, but should only be used when there is a compelling reason to limit a charity’s flexibility.

• Attach a signed agreement letter to the donation that clearly outlines all conditions of the gift. By accepting the donation, the organization agrees to its conditions.

• Require grant recipients to submit periodic reports on financial operations and on the specific activities undertaken with the funding supplied by the donor.

• Craft explicit instructions on how recipient organizations should go about repurposing the gift made in perpetuity. Donors should be aware that the organization may want to alter the terms of the gift to meet future needs if it becomes impossible or impractical for the organization to adhere to the original terms.

• Ensure that there is clarity around intent in any legal documents drafted. The language of the documents should protect both the donor and advance the mission of the recipient organization.

• Appoint a Charitable Distribution Advisor™ to protect a donor's charitable interests.

Next Generation

Another key component in safeguarding donor intent is sharing charitable plans with heirs. This is particularly true for charitable giving that is planned to extend far into the future with the next generation playing a role in reviewing distribution plans, assessing beneficiaries' adherence to donor intent and advancing next generation succession. Too often charitable plans are developed in isolation and not communicated, leaving the next generation with the very difficult task of deciphering and implementing a donor's vision.

Encourage clients to share their values, priorities, and expectations with heirs. Developing an ethical will, composing a letter about philanthropic influences and aspirations, developing a mission statement or using one of the many resources available to articulate legacy, such as the Grandparent Legacy Project from 21/64.net, are great ways to pass on family values and assist the next generation in representing donors interests. Developing and discussing a succession plan that defines who is eligible for leadership, when, for how long and under what conditions, also facilitates understanding across generations. Through this process clients might find that the charitable plan they envisioned is unrealistic or more work needs to be done to prepare heirs for carrying the philanthropic torch forward.

Due Diligence

All too often donors list bequest beneficiaries in their estate plans without conducting due diligence or having any relationship with the organization. However, without a thorough understanding of an organization, how can donors can feel confident that their gifts will reflect their personal interests and have a positive impact?

Advisors can encourage clients to ground their bequest decisions in an informed understanding of the organizations they identify. Assessing organizational health and identifying gift opportunities entails reviewing websites, strategic plans and budget and financial information. If a bequest is seriously under consideration, meeting with organizational leadership can help clients further ascertain:

--Values Alignment: Are the values of this organization aligned with mine?

--Effectiveness: Does the organization have an operating strategic plan and is it regularly revisited? Does it have an evaluation plan and methodology that captures real outcomes?

--Organizational Health and Capacity: Does the organization possess the financial health and managerial capacity to achieve its objectives?

--Accountability: Does the organization readily make its financial and operating information available?

Engaging in a due diligence process and an open dialogue with nonprofits about options, "what ifs" and agreed upon objectives and oversight ensures a win-win proposition for donors and organizations. Since interests, intent and financial circumstances change over time, advisors should encourage clients to periodically revisit the charitable designations named in their estate plans to ensure that bequests are still viable and aligned with their desires.

Enhancing the Advisory Practice

Even in this cursory discussion of topics that can be introduced during a discussion about the philanthropic interests of clients, it's clear that there are many ways in which advisors can help ensure that their clients are making good philanthropic decisions. This includes helping align a client's charitable activities with their personal goals and interests so that they have the impact desired and are constructed to protect both the donor and the organizations to which they are giving.

As clients become more aware of the importance of incorporating philanthropy into their estate plans, advisors who go above and beyond to meet their clients' philanthropic needs will seize a competitive edge. In fact, more and more advisors see the value in adding professional philanthropic expertise to the conversation with clients and are including philanthropic advisors as an integral part of their client-centered teams. This not only ensures that the philanthropic interests and needs of their clients are fully addressed but further demonstrates the advisor's interest in helping clients optimize their charitable giving.

Engaging clients around philanthropy strengthens existing client relationships and establishes ties to the next generation. And while there is clearly a return on investment for the advisor, there is an even greater return for clients in knowing that their charitable dollars will have the intended impact during their lifetime and beyond.

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