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Transformational Charitable Gifts Through Collaboration

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Introduction

Philanthropic giving remains a hallmark of American culture. Americans gave away over $484 billion to charity in 2021, a 4% increase over 2020[1]. Although giving is ultimately the donor's decision, a team of professional advisors can serve a vital role in a client's philanthropy. When it comes to charitable giving, many clients underutilize their professional advisors. Maybe it is from a belief that their giving is not that of a "mega-donor," and as such they assume that their advisors would not see it as important enough to discuss. But some clients may not understand the positive impact their advisor team can have on their charitable plans. Whatever the reason, advisors can help their clients and the causes clients hold dear, by initiating the charitable conversation.

The Charitable Conversation That is Not Happening

Ideally, creating a charitable gift is a collaborative journey. Research suggests that most donors do not rely on professionals before making a gift – over 75% of high-net-worth donors, according to one study, did not consult with an advisor regarding their charitable giving[2]. In the same study, only 5.3% of high-net-worth donors reported being approached by an advisor about giving. Why are advisors not more proactive in discussing philanthropy with clients?

A misconception held by many advisors is that unless the client specifically asks for assistance with planning charitable gifts, it is not the advisor's role to suggest it. Some advisors might make a tepid inquiry like "do you have any charitable intent," and then drop the conversation if the client does not pursue it. More is necessary and appropriate. In contrast to charitable discussions, few, if any, estate planning attorneys would prepare core estate planning documents without inquiring about the client's wishes concerning end-of-life treatments. That may well be a topic many clients would not otherwise bring up.

Charitable giving is a foundational discussion topic that all advisors should routinely include in the questionnaires they provide to clients, as well as in their planning discussions with clients. Clients can always say "no," but the ideas discussed below should be on the planning agenda. Seventy-eight percent of advisors are experiencing the impact of philanthropic discussions with their clients on their bottom line. Specifically, having philanthropic conversations has helped advisors to:

- Establish new clients (60 percent) and deepen existing relationships (74 percent).
- Build relationships with clients' extended family (63 percent). [3]

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[1] Giving USA Foundation, https://givingusa.org/.

[2] 2016 U.S. Trust Study of High-Net-Worth Philanthropy

[3] 2018 U.S. Trust Study of the Philanthropic Conversation

Another limitation affecting some advisors is a narrow view of charitable giving. Some advisors primarily view charitable giving from a tax minimization perspective. If there is no potential for an estate tax reduction, the perceived relevance of charitable planning to some advisors declines. When the gift, estate, and GST exemption was $1 million, there were more instances where advisors discussed the use of charitable lead trusts, as an example. Similarly, when Congress recently considered a 3% and 5% surcharge on trust income more than $200,000 and $500,000, the professional literature reflected an increased awareness of using charitable remainder trusts ("CRT") and other types of planning to use charitable giving to reduce trust income taxation. With the SECURE Act quashing the use of the so-called "stretch IRA," CRTs gained traction in both professional literature and charitable practice to mimic the stretch. But charitable planning may be motivated by a myriad of non-tax objectives and may accomplish important non-tax client goals. Advisors should take a more holistic view to address charitable planning with clients.

By understanding donor motivations, proactively initiating the philanthropic conversation with clients, and working in a more holistic, collaborative manner with each other, advisors may better meet client objectives, and increase client giving beyond that which the client initially considered. This may give clients more satisfaction and have a more significant societal impact.

Understanding Donor Motivation

It might be surprising to some advisors that taxes are not the primary motivation for giving. Belief in the organization's mission is actually the primary motivation, followed by the belief that the gift can make a positive difference[4]. Indeed, when asked how eliminating income tax deductions for charitable giving would impact their charitable giving, 72.1 percent of affluent households indicated their charitable giving would stay the same.[5]

Success in helping clients with their charitable planning is based on understanding their motivation as potential donors. This includes their motivation for giving, as well as reasons the client might choose not to donate. Advisors should not carry into client meetings personal biases and feelings on charitable giving or the chosen charities of the client. Advisors can explore and uncover a client's deepest-held values and beliefs through meaningful conversation and dialogue. Having conversations with clients about what motivates them, leads to better understanding of what is most important to them. Often clients will articulate that doing "something" for the world at large is one of their values.

A challenge with this process of uncovering donor motivation is many advisors may feel uncomfortable discussing these "softer" topics, as opposed to the confidence in discussing more technical topics (tax, legal, financial, etc.). "Softer topic" discussions are fundamental to estate, tax, financial and other planning. There is a simple solution for advisors who feel technically proficient on charitable planning techniques but less confident in discussing the human and emotional aspects of giving: collaborate. When advisors collaborate, each team member will possess unique skills and competencies. A team of advisors will offer more skills than a single advisor. The planned giving officer at the client's favorite

[4] 2021 Bank of America Study of Philanthropy: Charitable Giving by Affluent Households
[5] Id.

chosen charity or charities generally have the “softer topic” conversation skills and can fill that gap if the advisor is not comfortable. That is in fact what many planned giving officers spend considerable time engaged in.

The charitable planning decision is hardly ever just “about the numbers.” As Russell James, Professor of Charitable Financial Planning at Texas Tech University writes:

> *“Giving motivation comes from the social emotion system. It comes from story. Introducing math, numbers, and finance can disrupt this process. It can trigger the deliberative, error-detecting logic system. This system can block giving motivation. It can interfere with the social-emotion story processes that drive motivation[6].”*

What are the options for advisors in assisting clients with uncovering the story that drives giving motivation? One way is to be proactive and initiate the philanthropic conversation.

Initiating the Philanthropic Conversation

Starting the charitable conversation at the beginning of a client relationship can be effective in the advisor's contribution to the client’s overall planning success and the advisor’s involvement in a client's giving. During the onboarding process, asking new clients questions about charitable giving will provide critical insights into a client's motivation for giving (or not giving, as the case may be).

Examples of questions an advisor can ask to help uncover motivation include:

- Would you like to use charitable giving to set an example for your heirs?
- What would you like to do for the world at large if anything?
- Does religion or faith play an essential role in your life?
- How connected are you to the institutions where you went to school?
- What charities do you currently support and why?
- Where do you volunteer today, or would you like to volunteer if you could?
- What would you like to achieve with your money?
- If you did not have to work anymore, what would you do?
- What would you like your legacy to be?
- How would you like to be remembered?

Russell James provides additional probing questions in his book *The Socratic Fundraiser*[7].

Some advisors may not feel comfortable asking the types of questions listed above of a client. Some advisors may not feel sufficiently knowledgeable in the charitable tools, and the soft components of giving, that may be useful in situations revealed by a client. Those advisors may find encouraging the

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[6] James, R (2022). Solutions in Fundraising Math: Story First, Math Second. https://www.linkedin.com/pulse/solutions-fundraising-math-story-first-second-russell/?trk=public_profile_article_view

[7] James, R (2022). *The Socratic Fundraiser: Using Questions to Advance the Donor’s Story*. http://www.encouragegenerosity.com/TheSocraticFundraiser.pdf

words of Orrin Woodward: "Success is on the other side of your comfort zone.[8]" If uncovering donor motivation is crucial to your better serving clients, advisors may need to address topics that are uncomfortable for them as advisors.

Technical knowledge is only one element needed to create a successful plan and a satisfied client. Knowledge of the donor's motivations for giving is primary. Asking meaningful, impactful, open-ended questions will help uncover motivations. Practitioners are often accustomed to asking leading questions, not open-ended ones. Leading questions are necessary to identify names of fiduciaries, distribution standards, and other pertinent information. However, the charitable discussion is qualitatively different and needs to be addressed as such.

One tool to assist clients in creating an overall philanthropic strategy that encompasses values and legacy goals is a charitable mission statement.[9] A mission statement serves as the guiding principle for a client's giving. The statement may be simple or complex. A guide to the development of a charitable mission statement is the Rockefeller Philanthropy Advisors' "Philanthropy Roadmap."[10] The “roadmap” leads clients through a series of questions, the answers to which form the basis of a giving strategy. Practitioners might find this a helpful tool in addressing these broad charitable discussions.

If the answers to the charitable intent questions demonstrate a strong desire to give or continue giving, some clients may still hesitate to give more. Wealthy clients have reasons for not giving more. The top three cited reasons for not giving are: (1) a belief that the gift will not be used wisely, (2) a lack of knowledge or connection to the charity, and (3) a fear of increased donation requests from other charities. These are all topics for which an advisor may alleviate a client's concerns, help clients become more comfortable with their charitable goals, and perhaps motivate additional giving consistent with the client’s wishes.

A client may choose not to make charitable gifts (or larger ones) out of concern for running out of assets. For these clients, the worry may be analyzed by the client's wealth advisor constructing financial models reflecting various scenarios of giving. The financial advisor can endeavor to give comfort, when appropriate, that clients have a high probability of outlasting their assets through a given period of retirement. Using Monte Carlo analysis and financial planning software, a wealth advisor may demonstrate to a worried but generous client whether they might afford to part with some of their assets today and whether they can give away assets as part of their estate plan. In either case, the analysis may help demonstrate, under various assumptions, the sustainability of a portfolio of assets. In many instances quantifying the financial results may inspire a client to give, either today or as part of their legacy, or perhaps both.

Working together, the charitable planning team can construct a plan that better meets client goals and may also inspire a client to give more abundantly.

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[8] Twitter post from Oct 25, 2016, @Orrin_Woodward

[9] For samples and a worksheet, see https://www.fidelitycharitable.org/guidance/smarter-giving/mission-statement.html

[10] See https://www.rockpa.org/wp-content/uploads/2017/08/Your-Philanthropy-Roadmap.pdf

The Giving Team: Comprehensive and Collaborative

The cooperation and coordination of the client's advisors is the leading indicator of a successful charitable journey. Each team member should have an essential purpose for participating in meetings with the client. Individual advisors should avoid directing the team to focus on their specialty. Ultimately the donor is the team "CEO" and all members of the team should be working in alignment to assist clients with fulfilling goals and objectives. When it is helpful for one advisor to serve as the team leader, that role should generally be temporary until the particular purposes of that leadership are accomplished. The mantel of leader should shift to other advisors or the client as appropriate.

Perspectives on a holistic team

When a client is pursuing a major gift for the first time, there are likely to be several personal and planning issues that need attention. However, a functional client advisory team can help address those issues and provide critical guidance throughout the process.

A wealth manager can help identify the donor's financial capacity to give, and in conjunction with the tax members of the team, the ideal assets for the gift. A wealth manager is often key to coordinating the giving, ongoing management, and supporting the administration of charitable vehicles.

An estate planning attorney may address estate tax and other planning implications of a gift or bequest, identify sources for the gift (e.g., which trust) and may help structure the client's donation to maximize impact. The estate planning attorney can also help navigate the complex legalities of charitable tools, i.e., private foundation rules, the use of CLTs or CRTs, etc. The attorney may advise on the options to structure trusts and other gifts. The estate planning attorney can provide counsel on legacy giving through a will or trusts as a potential option.

A philanthropy advisor representing the charitable organization may provide advice on the implications of the gift and help structure the gift to maximize its personal and charitable impact. The philanthropy advisor may have the expertise in specific giving tools, plus the software to run gift examples that clearly illustrate how a gift will benefit both the client and the nonprofit. Helping the client identify a worthy program and ensure that the gift is used ineffectively, according to a gift agreement, falls under the expertise of a philanthropy advisor.

A CPA is a critical team member who may advise on the income tax consequences of a gift or bequest. (e.g., using qualified plan assets for funding donations). The CPA can also help identify the assets that may be preferable to give and the timing for giving the assets. CPAs may advise on the tax consequences of the various ways a planned gift may be structured. They may provide and develop insights on how charitable giving fits into the client's financial goals, complementing what the wealth adviser may do with forecasts as noted above. Clients may perceive a CPA as the most well-positioned to advise on the tax benefits of giving. While tax benefits may not be the primary motivator for a client, wealth clients report that tax benefits do matter to them. A CPA may assist by evaluating illustrations from the wealth adviser, or creating illustrations if there is no wealth adviser doing so, and adding other strategic input.

The executor or trustee of a person's estate is a critical participant in any planned gifts effectuated after the person's death. The executor is responsible for carrying out the deceased person's wishes, and so they play an essential role in making sure that any planned gifts are correctly carried out. Having the client's personal representative, or successor trustee, involved increases the client's confidence that the charity will accurately put the gift in place.

By assembling a team of experts such as, but not limited to, those suggested above, the client can be confident that they are endeavoring on their charitable journey efficiently and effectively.

The Client Gift Agreement Process

Donor gift agreements are contracts. These may be drafted as legally binding documents. However, in many instances they may be drafted as non-binding letters of intent between a donor and a nonprofit organization. In all instances the agreement will state both parties' expectations and obligations, if any. For major gifts, these agreements should be in writing and signed by both the donor and a representative of the nonprofit. The agreement should list in detail the terms of the gift, including any restrictions on the funds' usage and any naming opportunities offered to the donor. The agreement should state the nonprofit's commitment to use the funds for the intended purpose and specify the frequency of reports on the fund's impact. Donor gift agreements may clarify donor and nonprofit roles and responsibilities. Importantly, a strong agreement can help prevent future misunderstandings or disputes.

The following discussion reviews the various persons who have a role in the gift agreement process.

Multi-Disciplinary Approach to the Gift Agreement Process

The philanthropy advisor representing the charitable organization is responsible for communicating the organization's gift acceptance and "naming" policies. For example, if the donor is seeking the naming (e.g., externally on building, internally in building, or permanently naming a department or college), the planned giving representative must communicate the essential requirements for the gift. The planned giving officer will be able to reference the organization's gift acceptance policy to ensure the organization can accept a specific asset type, i.e., cryptocurrency or real estate

An attorney retained by the client, perhaps the estate planning attorney, could review the gift agreement to examine whether the documentation satisfies the client's donative intent.   In some states, a gift agreement does not carry any legal authority, and the charity cannot sue the donor unless the charity can claim an extreme detriment because the gift did not occur.[11] If the client is concerned ab out the enforceability of the document counsel should research that to confirm. An enforceable pledge also limits the donors' opportunities for how a donor could pay that pledge. For example, if the donor wants to use her private foundation, and the commitment is binding against the donor personally, the donor cannot use her private foundation to satisfy that pledge. If the client's legal representation is not part of the negotiation process, there is a risk both to the donor and the charity that the gift may not be structured successfully.

The wealth advisor should examine the financial aspects of the gift agreement. Most gift agreements are established with a pledge payment schedule. The wealth advisor should review the donor's capacity to

[11] Whether a pledge is legally enforceable is a matter of state law. To be a binding commitment, the agreement must have one of the following: consideration detrimental reliance or public policy.   Detrimental reliance involves charities and possibly even other donors' substantial reliance on the promise to make the gift. The consideration does not have to be of equal value. For example, a University may agree to name a building for the donor because of the pledge, which is sufficient consideration.

fulfill the pledge payments. The wealth advisor should verify the agreement allows for the asset recommended by the planning team, to be used to fulfill the pledge.

Charitable organizations accustomed to major gifts typically have in-house or outsourced legal counsel that draft the gift agreements. The organization will represent its best interests based in the organization's gift acceptance and naming policies. The charitable organization’s agreement may be the starting point of the agreement conversation. The client should feel comfortable supplying their own version of an agreement that has been reviewed by their advisors. There is nothing wrong with negotiating the agreement to achieve a result comfortable for the client and within parameters acceptable by the charity.

The client's input is critical to the final "legacy" terms of the gift agreement. The agreement should convey the client/donor’s ultimate legacy and how that will be conveyed in future generations at the nonprofit. The agreement should be written to facilitate the client's future generations (e.g., great-grandchildren) who may not be privy to direct communications from the donor as to the rationale and intent for the gift, to understand why their great-grandparents made the gift. Often the gift agreement is the best opportunity for the donor to convey "why" they are making this transformational gift for the betterment of humankind.

These conversations can be delicate, especially when the donor desires anonymity. In these cases, it is particularly important for the donor's advisory team to be involved to protect the donor's wishes. The donor's advisory team can help to ensure that the agreement between the donor and the charity is clear and unambiguous, and that all parties understand the donor's desire for anonymity – and how the donor defines “anonymity,” which could mean different things to different donors. In addition, the advisory team can help to monitor the charity's compliance with the agreement and to protect the donor's anonymity.

Donor Case Study

Bart and Mary Martinez are married in their early 60s with two adult children who are in their mid-twenties. Bart and Mary are entrepreneurs with many active and passive investments. In 2008 they acquired Rentals, Inc., a Sub chapter S corporation that rents commercial construction equipment. In late 2021 a larger equipment rental business offered to purchase Rentals, Inc.

Bart and Mary knew they could have a personal taxable event of at least $75 million in 2021. They are philanthropic and had already decided if this deal goes through, they will donate $1 million to State University. They would like to mitigate more income taxes in 2021 but are not motivated to give away more cash outright to charity at this stage of their lives. Bart and Mary plan to leave most of their wealth to their children.

Bart and Mary meet with a Planned Giving officer from State University. The Planned Giving Officer recommends that the Martinez's consider discussing with their advisors the pros and cons of a charitable lead annuity trust (“CLAT”), specifically one which is a grantor trust for income tax purposes and is structured to no longer be significant part of the grantor's (Mary's) estate. Bart and Mary are philanthropic, but they were intrigued that they could earn a substantial income tax deduction in 2021 to offset the sale of Rentals, Inc. and leave the remainder of the trust to their children outside of their gross estate. While they explored the possible use of a charitable remainder trust (“CRT”) to own some interests in the business before the sale (a so-called charitable bail-out) that was not pursued.

The planned giving officer ran an illustration to describe the technique and a follow-up letter better. A copy of such an illustration follows this article.

The first Martinez advisor invited to a second discussion was Bart and Mary's CPA team. They did an outstanding job of familiarizing themselves with the concept. The CPA's role included the following:

1. Help Bart and Mary understand how additional income tax deductions from the CLAT would offset income from their 37% bracket in 2021.
2. The CPAs were the first to evaluate and approve or question the technique suggested by the Planned Giving officer. The CPAs endorsed moving forward with the proposed gift technique.

Another Martinez advisor invited to the discussion was their estate planning attorney, with who they had some recent experience in 2020. They previously met with their attorney to create Spousal Lifetime Access Trusts (SLATs) and used 100% of their federal gift and generation-skipping transfer tax exemptions. ($11,580,000 each in 2020)

The team learned an important piece of information not yet revealed about the SLATs. This meant that "zeroing out" the CLAT – meaning, structuring the CLAT in such a way that any gift or estate tax liability is offset by a charitable deduction – would be essential since the Martinez's used their entire transfer tax exemptions already, although they will have available in future years the inflation adjustment increases to the exemption. This kind of CLAT is referred to as a "grantor CLAT[12] because of the possible income tax benefits of a charitable contribution deduction available because it is structured as a grantor trust.

Bart and Mary's attorney was crucial to the strategy in several ways:

1. The Planned Giving officer knew that the IRS had approved this specific type of CLAT in various Private Letter Rulings (PLR's) which the clients were advised do not constitute precedent binding on them (unless they obtained their own PLR), so it would be up to the donor's attorney how to proceed to best navigate the IRS's historical guidance on this technique.
2. Work with the University to draft the initial trust document.
3. Make recommendations to Bart and Mary on a competent and appropriate trustee.

A well-known corporate trustee was selected. The trust officer, comfortable with the terms of the CLAT and experienced in the nuances of the CLAT, was added to the Martinez team. Bart and Mary always invested in their own companies and real property, so they never previously hired a wealth advisor, but liquidating their closely held business changed their needs. By establishing the relationship with the corporate trustee, the Martinez's were introduced to a wealth advisor (whether with the corporate

[12] A grantor charitable lead trust is a charitable lead trust that has grantor trust characteristics for income tax purposes, but which is a completed gift for transfer tax purposes. This is sometimes referred to as an "intentionally defective" charitable lead trust. The trust distributes its remaining principal, at the end of the lead term, to the donor's heirs when it terminates. However, the donor retains enough rights in the trust for the trust to be considered a grantor trust for income tax purposes but no powers that would make the transfer to the trust incomplete for gift and estate tax purposes. As a result, the donor pays tax on the trust's taxable income, but the trust's assets are outside of the donor's estate. Since the gift is deemed to be "for the use of" the charity, the income tax deduction is subject to IRS 20%/30% limitations

trustee or independent) to help them create and implement a comprehensive wealth management plan that incorporates the financial implications of the CLAT.

The trustee and wealth manager quickly became a vital part of Bart and Mary's team:

1. The gift technique utilized a third-party professional trustee.
2. Additionally, having another set of professional "eyes" on the trust and the technique was a helpful endorsement that the gift technique was structured in a manner that would achieve the Bart and Mary’s.
3. For the first time is Bart and Mary's adult lives, they used an overall strategist to help them review their goals at a “macro” level. This is the wealth manager’s strength and expertise.
4. Bart and Mary wanted the charitable annuity payments from the CLAT to transfer to a Donor Advised Fund (DAF) and subsequently make grants to State University and other charitable organizations. The trustee was able to accommodate Bart and Mary's request.

Bart and Mary decided to use the annuity payments from their new CLAT to give more than the initial $1 million pledged. However, they also decided that they wanted to receive naming rights for a new building on campus. The University’s naming policy requires that the pledge to name a building must be paid in full in no more than 5 years. Because the CLAT was established over 14 years, the University needed to examine the terms of the gift further and get special approval from the Board of Trustees to approve the naming of the new building.

If Bart and Mary's advisory team did not include the Planned Giving officer representing the University, the team would be at a major disadvantage attempting to negotiate with the University to fulfill Bart and Mary's donative intent.

In the end:

- The estate attorney drafted the CLAT in such a way that no material gift tax exemption was required for the transfer (i.e., it was largely a zeroed out CLAT), and Bart and Mary were comfortable with those terms, as was the trustee.
- The CLAT was signed and funded with proceeds from the sale of Rentals, Inc.
- The wealth manager implemented a diversified portfolio of assets for the CLAT designed to generate minimal investment income, knowing that Bart and Mary are taxed on trust income, while also meeting the approval of the trustee. The wealth manager also helped Bart and Mary establish and fund their new donor-advised fund.
- With the help of the Planned Giving officer, Bart and Mary were able to come to an agreement with the university on the terms of the naming opportunity.
- The CPA ran tax projections for Bart and Mary so that they could plan for any capital gains remaining from the sale of Rentals after factoring in the charitable income tax deduction from the CLAT.
- Bart and Mary made an impactful gift to State University and are delighted with the results. They invited their children to participate in the philanthropic process by helping suggest grants from their DAF and named their children as successor advisors to the DAF.

Conclusion

Most transformational charitable gifts do not occur in a vacuum. If advisors are motivated to help their clients make transformational gifts (that will honor their client's legacy and satisfy the charitable mission), both clients and charities will benefit.

Recognizing the interdependence of advisory team members and the charitable client is crucial to effectuate a transformational charitable gift.

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