

Giving Through a Will

A flexible tool

The charitable bequest is the most common means chosen to leave assets to qualified charitable organizations and institutions at death. This is because it is so widely known as a vehicle for property transfer.

Whether a simple bequest of cash or a plan that creates trusts for family wealth management while also benefiting a nonprofit recipient, the will is one of the most flexible gift planning tools.

Begin with the basics

A will that includes one or more charitable legatees is basically no different from other wills. The information it contains and the method in which it is executed must qualify under governing state laws.

The proper name: Just as several people in the same city may share the same name, many charitable institutions have the same or very similar names. They may even be located in the same city or state. For this reason, when drafting a will that leaves property to a charitable entity, care must be taken to fully identify the intended recipient of the property.

If in doubt, check with the organization(s) or institution(s) involved and request its legal name. It may also be useful to include the most recent known address.

The use of the property: As in bequests to individuals, testators often choose to specify the use to which their bequests will be placed. Generally, so-called precatory language may be used to express a preference, or wishes may be stated in such a way that leaves little room for the recipient to determine use.

Most charitable bequests are left to the charitable entity “for the general purposes of the organization in the discretion of its board.” Since it may be many years before the funds are received and the needs of the organization may change in many ways, most donors choose to allow maximum flexibility for the use of the funds bequeathed.

If a donor wishes to restrict the use of a bequest, it is in the best interest of all involved to discuss the intended use with authorized representatives of the institution before the execution of the will.

Limits on the size of charitable bequests: Some states may impose limits on the amounts that can be left to charitable beneficiaries in certain situations.

A spouse and/or children may be entitled to specific percentages of an estate which may not be encroached upon by charitable dispositions. Such restrictions rarely impose barriers in the typical situation, but state laws should be examined if one or more charitable bequests that amount to a substantial portion of an estate are contemplated.

Other than the considerations outlined above, there are generally no limits on the amount of property which may be left for charitable purposes through a will.

Choosing the form of the bequest

A charitable bequest may be structured in many ways. A person may choose to leave a specific dollar amount, a particular piece of real or personal property, a percentage of the estate, all or a portion of the residue of the estate following the satisfaction of other bequests, or a combination of the above.

The fixed dollar bequest: In the case of a smaller bequest, it is usually best to simply state specific dollar amounts. This is particularly useful in the case of a highly liquid estate that will be reviewed on a regular basis.

If a person is considering a larger bequest or if the estate will be composed primarily of relatively illiquid assets, it may be best to choose another method of satisfying charitable intentions.

The bequest of property: A donor may choose to leave a particular piece of real property, whether a home, farm, or rental property, to a charitable beneficiary. It may be left outright, or a life estate may be granted to a surviving spouse or other relative or friend.

Great care should be taken to properly describe the intended property and the interest bequeathed if it is not the entire ownership interest.

In the case of tangible personal property such as jewelry, automobiles, and other assets, all aspects should be carefully considered before making such assets the subject of a charitable disposition. Such gifts may create disputes and unnecessary friction among charitable and non-charitable heirs.

A specific bequest of intangible personal property such as stocks and bonds may not be the best choice. The value may have increased or decreased to a point where it no longer represents the intention of the testator. Or the property may have been disposed of prior to death, and questions may be raised as to whether it was intended that other property be substituted.

Bequest of the residue: Perhaps the most common method of leaving charitable bequests is through residual clauses. After providing for relatives and friends, many testators will specify that all or a portion of the residue of their estate be distributed to one or more charitable organizations or institutions. As a result, loved ones are cared for first and charitable wishes follow, if this is the testator's desire.

Many people choose to leave a set percentage of the residue of their estate for specified charitable uses. This approach offers a correcting mechanism in case the estate should unexpectedly increase or decrease in value. Some may choose to bequeath a percentage of their estates according to the dictates of their religious beliefs.

Tax considerations

An unlimited amount may be deducted from federal estate and gift taxes for qualified charitable gifts. See [IRC section 2055\(a\)](#). Check applicable state laws for restrictions that may apply on a state level.

Cash vs. property: Unlike gifts made during life, which are deductible for federal income tax purposes, charitable bequests of non-cash property generally do not result in any greater tax savings than equivalent bequests of cash. After the eventual elimination of the stepped-up basis, this will no longer be the case. Amounts left to charity beyond exempted amounts could then be selected from low-basis assets, while leaving high-basis property to non-charitable beneficiaries.

The marital deduction: Many married people use trusts in their wills to take maximum advantage of the unlimited marital deduction. In the case of a life interest left to a spouse followed by a charitable disposition of the property, a combination of the charitable deduction and the marital deduction will effectively eliminate all tax at the federal level. See [IRC sections 2523\(a\)](#) and [2056\(a\)](#).

Gift and estate taxes: Tax legislation enacted in 2001 provided that the amount that can be left to heirs free of federal estate tax would gradually increase to \$3.5 million in 2009. The estate tax is scheduled to be repealed entirely in 2010, but is scheduled to reappear in 2011 unless Congress acts to make repeal permanent. The federal gift tax was not repealed by the 2001 legislation. The maximum amount that can be given to non-charitable recipients during life was, however, increased to \$1 million in 2002 with no further increases scheduled. Check for latest provisions before completion of gifts that may be subject to gift tax.

Generation skipping transfer (GST) tax: This area of the law is quite complicated; however, charitable gifts may minimize the amount of transfer tax owed for some estates. It is one consideration to explore if the support of future generations is one of the person's goals and if the estate would otherwise be affected by the generation skipping transfer tax. Under terms of federal tax legislation in 2001, the amount exempt from the GST tax is scheduled to increase in tandem with estate tax exemptions and be repealed along with other estate taxes in 2010. For details on the GST tax, see [Code sections 2601-2663](#) and the corresponding regulations.

Recent developments: The tax code changes frequently. Always check for recent developments before the completion of estate plans. The IRS publishes helpful tax planning information and updates at www.irs.gov.

Other opportunities

The will is, indeed, the most commonly used method of making charitable gifts at death. Other opportunities exist, however, which may be used in combination with a will or as stand-alone vehicles.

A charitable remainder unitrust or annuity trust allows a giver to receive income each year for life and make a substantial charitable gift at death.

If desired, the trust may be created in a will to go into effect at the giver's death. The income, in that case, would be distributed to a survivor as specified by the giver in the trust agreement.

Charitable income or estate tax deductions (depending upon whether the trust is inter vivos or testamentary) result in the year the trust is established.

Other life income plans that feature fixed or variable income may also be available.

In short, virtually any giving method that can be used during life may also be included in a will, adding to its attractiveness to donors.

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