



UNIVERSITY OF CALIFORNIA, BERKELEY

OFFICE OF GIFT PLANNING

BEQUEST ADMINISTRATION

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Overview

- Work with Donors
- Notice/Lack of Notice
- Gift Document Review
- Trustee/Executor Communication
- Distributions/Lack of Distributions
- Accountings/Lack of Accountings
- Litigation (in moderation)
- Use the Gift

Work with Prospects

- Identify potential bequest donors
- Work closely with prospects to identify and finalize purposes that meet their needs as well as the (long-term) needs of the charity
- Steward your bequest intention donors well
- Know that you are still missing approximately 3 out of 4 of these donors

Notice of Death

- Notice
 - Probate- Notice of Petition to Administer Estate (CPC §8100).
 - Trust (CPC §16061.7).
- Monitor your donors
 - Social Security Death Index <http://ssdi.rootsweb.ancestry.com/>
 - Lexis Nexis People Search (requires access)
 - Send letter if not notified
- Condolence Letter as appropriate
- Request Copy of Pertinent Document
 - Plan for resistant trustees
 - Most life insurance/retirement account companies will not provide (do not retain) the original designation. Ask for exact terms.

Review Document

- Residual gift?
 - If trust- request in writing to be kept reasonably apprised of the activities of the trust and its administration (CPC §16060) and request information re assets, liabilities, receipts, and disbursements (CPC §16061 Duty to Report at Beneficiary's Request).
 - Probate- file Request for Special Notice (CPC §1250)
- Asset
 - General pecuniary gift
 - Set amount of cash
 - Simplest gift, consistent with presumably all gift acceptance policies
 - Unless there is another reason for concern, probably no need for accountings.

Review Document

- Personal property
 - Is it something you can accept under your charity's gift acceptance policy?
 - Is it something you wish to retain?
 - Are there costs of moving/storing it? Where will those funds come from?
 - Are there costs to repair/maintain it?
 - Is it something you wish to sell?

Review Document

- » Do the terms of the gift allow an immediate sale?
- » Are you in a better position than the trustee to sell it?
- » Stepped-up basis means that a sale will not trigger the same negative tax consequences as for a donation directly from a donor.
- » Are there expenses of moving/storing it?
- » Does it have any value?
- » Note: No need for 8282, 8283- exemption for bequests.

Review Document

- Real estate
 - Is it something you can accept under your charity's gift acceptance policy?
 - Is it encumbered?
 - Complete all due diligence- environmental, appraisal, title binder, etc. prior to acceptance.
 - Is it real estate your charity will want to retain?
 - Is it real estate you will want to sell?
 - » Are you in a better position than the trustee to sell it?
 - » If not, it will be easier and may reduce the charity's exposure to liability if the trustee sells and distributes the proceeds, but keep an eye on costs.

Review Document

- Copyrights, mineral rights, royalties, patents, etc.
 - Is it something you can accept under your charity's gift acceptance policy?
 - Think of how you will track the gift.
 - Can you assess the value? Appraisal may cost more than the asset is worth. Decide how you will count the gift.
 - Are you in a position to put the gift to use? Defend your rights? Who will do this?
 - Is it marketable? Might be worthwhile to just sell.

Review Document

- Securities
 - Again, know your acceptance policy.
 - Publically traded- easy to sell and value.
 - Non-publically traded.
 - » Get pertinent organizing docs to learn.
 - » Limitations on transfer.
 - » How to value.
 - » Any other pertinent corporate information
 - Bonds, etc.
 - » Probably makes sense to just sell unless maturity date is soon.

Review Document

- IRD Assets
 - If directly transferred, generally a great gift for estate and charity.
 - If transferred through will or trust, must have independent economic effect (all of my IRD assets to charity okay, \$300,000 to charity to be paid first from IRD assets not okay). (See Treas Reg §1.652(b)-2, Proposed Reg REG-101258-08.)

Review Document

- Purpose
 - How, when, by whom.
 - What does the donor want you to do with the funds?
 - » Is this consistent with your organization's needs and mission?
 - Endowed or non-endowed?
 - » If endowed, can you expend an appropriate amount each year in perpetuity?
 - Who has power of expenditure?
 - » Is it someone to whom this authority is delegated within your organization?
 - How will you allocate if terms are unclear or incomplete?
 - *Cy pres*
 - » Where unlawful, impossible, impracticable, wasteful (CPC §18506).
 - » Frequently easier to do this upfront than after the gift comes to the charity.

Review Document

- Other issues
 - What does the trust say about fees and expenses?
 - Who is the trustee/executor (relationship to donor/ professional fiduciary?)
 - Other beneficiaries- disqualified takers (CPC §21350).
 - Other beneficiaries- who was left out?
 - Who are surviving family and friends?

Ongoing Communication with Trustee/Executor

- Talk with the trustee or executor, establish a professional relationship, and let them know what you will need (they'll be upset if you wait until they've made all the distributions to request an expensive accounting).
- Is the trustee/executor hiring an attorney, accountant, or other professional advisors? What are the costs? Dual compensation (CPC §15687).
- Establish timeframes.
 - Communicate the needs of your charity, fiscal year, calendar year, matching fund potential, capital programs, etc.
- Establish estate value for residual gifts.
- Learn about other issues.
 - Abatement- not enough to cover all gifts (CPC §21401 et seq.).
 - Ademption- specific gifts no longer in estate (CPC § § 21131-21139).
 - Family members want personal property.
 - Family/friends want different use than outlined in gift document.
 - Anticipated problems identifying/transferring/selling assets.
 - Etc.
- Resolve as many issues as possible now.

Distributions

- Did you receive what you expected?
- Is it in the condition anticipated?
- Perform all due diligence as if this was an outright gift.
- If the charity is a residual beneficiary, is this all it will receive?
- Receipts and waivers.
 - Statutory refunding/equitable lien (CPC §15685).
 - Statutorily, distribution may not be contingent on agreement to indemnify (CPC §16004.5).
 - Waiver of unknown claims (C Civ Code §1542).
 - Overly broad waivers (any and all claims against a big bank).

Lack of distributions

- Must be made within a “reasonable” time.
- Phone call (first contact).
- Letters and e-mail.
- Petition to compel (CPC §17200 petition).

Accountings (or lack thereof)

- If you are a residual beneficiary, ALWAYS get an accounting (CPC §§16061 and 16062).
 - In most cases, UC Berkeley prefers a thorough list of assets and liabilities in order to reduce costs, but large estates should obtain a formal accounting (pursuant to CPC §16063).
 - Review the accounting, check fees and expenses. Are they as anticipated?
 - » “Reasonable” trustee fees generally will/should not exceed 1% of the value of the trust, but attorney fees and extraordinary fees and costs can be much higher.
 - » Executors paid pursuant to CPC §§10810-10811.
 - If you don’t understand or are uncomfortable with something, ask questions and push back. The donor wanted to support your charity and its mission.
 - Your charity has a fiduciary responsibility to ensure that the donor’s gift is completed and used as intended.

Acknowledge the Gift

- Acknowledgment should be personal.
- Who should sign- may be you and an officer/director/benefitting individual.
- Appropriate to gift value.
- Permanent recognition for significant gifts.
- Add professional advisor to professional advisor mailings.

Use as Intended

- Terms stated in testamentary document are binding.
 - Allocate pursuant to policy or best practice (high level oversight).
 - Pay attention to endowed/non-endowed.
- Know giving history, personal background if there are missing terms.
- Keep terms as broad as possible- don't plan more than necessary.
- Keep a clear record of administrative decisions.
- Utilize *cy pres* if necessary.

Litigation and Alternatives

- Select an excellent attorney.
 - Get referrals, check references, pay for an expert.
- Do you have a claim?
- What will it cost to recover?
- What are your chances of recovery?
- What is the minimum you can spend to show that you are serious?
- Know in advance how far you will go, how much you are willing to spend, and where the funds will come from if you don't recover anything.
- Value your own time.
- Consider alternatives-
 - Removal of Trustee.
 - Petition for Distribution, Accounting, Etc.

QUESTIONS