

An aerial photograph of the San Francisco Bay Area, showing the city, the Golden Gate Bridge, and the surrounding hills and water. The image is used as a background for the presentation slide.

When Your Donor has a Donor Advised Fund

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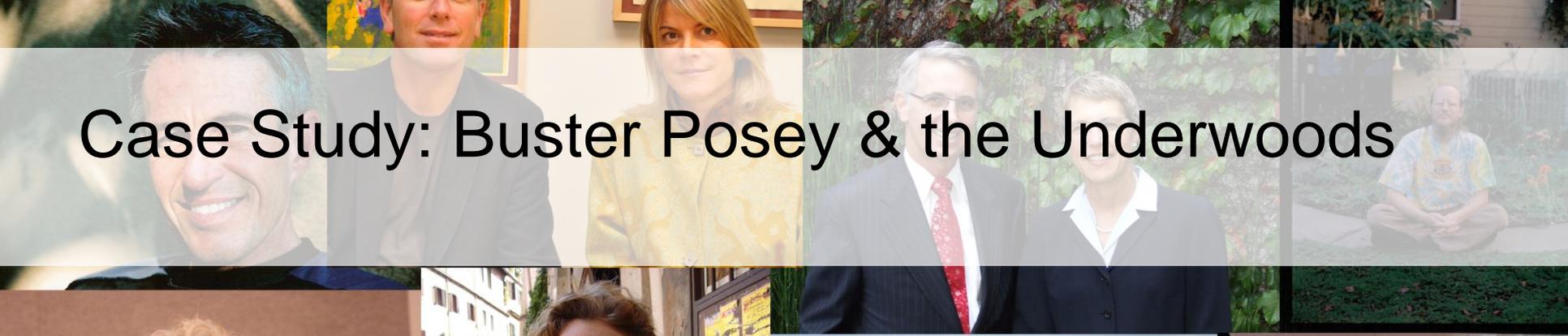
When Your Donor Has a Donor Advised Fund

Overview

- Case Study: Framework for today's presentation
- Donor Advised Fund (DAF) as a giving vehicle
- IRS Rules for DAFs with Case Study applications
- Proactive planning with DAFs as a giving vehicle
- DAF succession planning as legacy gift opportunity



Case Study: Buster Posey & the Underwoods



Case Study

Buster Posey is MGO for Campaign donors Claire & Frank Underwood

We join MGO Buster Posey in mid-November.

- Claire & Frank Underwood chair Buster's "The Campaign for Texas" Campaign Committee and are finalizing their campaign commitment.
- Buster receives email from Claire as the Underwoods leave for France
- ✓ Underwoods opened "The Claire & Frank Underwood DAF" at the Community Foundation of Texas.
 - ❖ Opening DAF contribution for Campaign gift commitment
 - ❖ Complex, appreciated assets will be contributed for additional giving
 - ❖ More charitable gifts to offset higher income year
- ✓ Upon their return, Underwoods want to:
 - ❖ Discuss further possible naming opportunities
 - ❖ Finalize Campaign pledge agreement
 - ❖ See about using their DAF for Gala dinner
- Buster needs more info about how DAFs work, especially in a Campaign, so he called the UT Gift Planning Office.



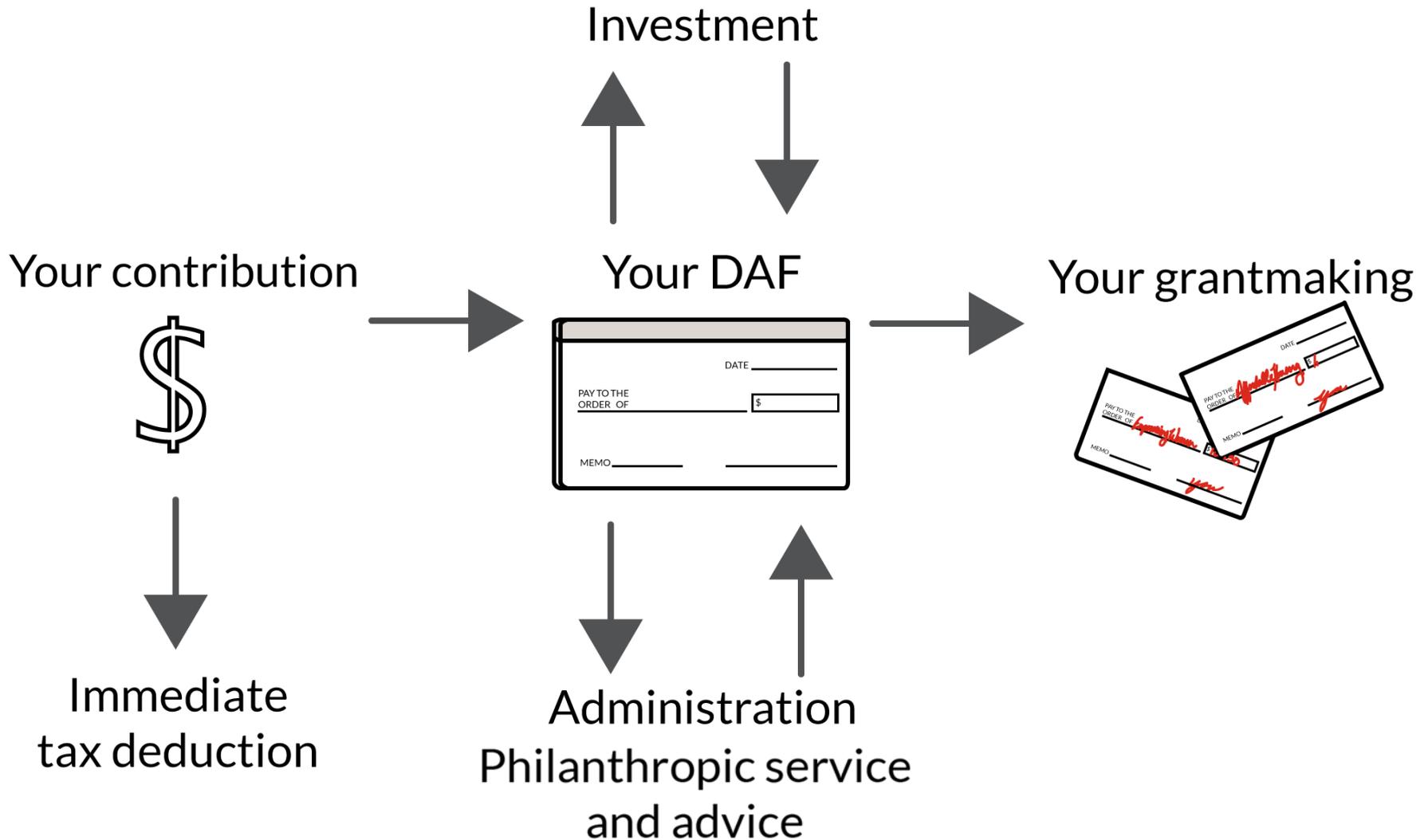
Understanding Donor Advised Funds

Donor Advised Fund As a Giving Vehicle: The Metrics

Explosive growth in DAF use continues

	2014	2015	% change
Charitable Assets	\$ 70.27 Billion	\$ 78.64 Billion	11.9%
Total Contributions	\$ 19.98 Billion	\$ 22.26 Billion	11.4%
Total Grant Dollars	\$ 12.42 Billion	\$ 14.52 Billion	16.9%
Grant Payout	21.7%	20.7%	
Total Number of DAF Accounts	242,390	269,180	11.1%
Average Size of DAF Account	\$ 216,760	\$ 235,727	8.8%

What is a Donor Advised Fund?



Donor Advised Fund as a Giving Vehicle

Explosive growth in DAF use continues

DAFs are flexible, efficient giving vehicles

- Donor makes irrevocable contribution of assets
 - ✓ Acceptance of complex, noncash assets by DAF sponsoring organization (real estate, art, closely held stock, etc.) is attractive
 - ✓ Enables donor to match philanthropy with liquidity event
- Donor receives tax benefits
 - ✓ Immediate income tax deduction up to IRS deductibility limits
 - ✓ Avoid capital gains taxes on contributions of appreciated property
- DAF assets can be invested and grow
- DAF grantmaking can continue over period of time
- Low cost alternative to private foundation

What is a Donor Advised Fund?

Defined by IRC §4966(d)(2)

IRC §4966(d)(2) says a Donor Advised Fund is a fund or account:

- Which is separately identified,
- Which is owned and controlled by a sponsoring organization,* and
- Which a donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of assets held in such fund or account.

All three prongs must be met for fund to be treated as a donor advised fund.

*As defined by IRC §4966(d)(1)

Permitted Donor Advised Fund Grantees

Type of entity being funded matters—must have “charitable purpose”

- Grants can be made to these grantees without following special rules:
 - Domestic 501(c)(3) charitable organizations and 509(a)(1) and 509(a)(2) public charities
 - Churches, Hospitals, Schools
 - Museums, Symphonies, Zoos
 - Governmental units (if for public purpose)
 - Private operating foundations
 - Some supporting organizations – 509(a)(3) public charities that are not considered disqualified to donor advised funds
- Grants can be made to these grantees using **Expenditure Responsibility**:
 - Other domestic charitable organizations
 - Foreign charities (can also use equivalency determination to make grants)

Impermissible Donor Advised Fund Grantees

DAF Excise Taxes – IRC §§ 4966-67

Distributions are limited from donor advised funds by excise taxes under §§4966-67.

“Such taxes are imposed on distributions:

- To any natural person, or
- To any organization that is not a qualifying public charity *unless* the sponsoring organization exercises expenditure responsibility, or
- For any purpose other than a 501(c)(3) charitable purpose, or
- On any distribution which results in a disqualified person (the donors or advisors or their relatives) receiving impermissible benefits.”

Excise taxes are imposed on the individual who receives the benefit and on the sponsoring organization of the DAF.

Impermissible Benefits—“More than Incidental Benefits”

To be “incidental benefits,” 100% tax-deductible donation is key

- Donors and advisors are prohibited from receiving more than **incidental benefits** from grants made by their donor advised funds.
- **Impermissible benefits** are those which are “more than incidental.”
- There are no regulations defining these terms. Case law, legislative history, and other charitable laws give more context.

Generally ask:

Would the donation be fully tax-deductible if the donor had given it directly instead of through a DAF?

If the answer is YES:

Great! You’re not offering the donor an impermissible benefit.

If the answer is NO:

You are offering the donor an impermissible benefit. Do not accept the DAF grant unless you are able to withhold the impermissible benefits.

- Some benefits will be considered incidental and will not change the deductibility of a donation.
- **IRS Resources:**
 - Pub. 526 offers advice to donors seeking to understand deductible contributions and outlines these incidental benefits.
 - Revenue Procedures 90-12 and 92-49 help nonprofits determine whether an item is substantial.

Examples:

- **Name recognition for sponsorships, tables, and even buildings** (as long as it's not usually sold as advertising space such as in a magazine or newsletter).
- Most member benefits if memberships are \$75 or less per year, including member-only events if the cost per person is not more than \$10.60 (see Resources).
- Token items with the nonprofit's name/logo are offered, and the cost of those items is \$10.60 or less.

Case Study: Solutions for Buster Posey

Is DAF use for Naming Opportunity Incidental or Impermissible Benefit?

Claire and Frank expressed interest in possible naming opportunities as part of the Campaign.

Issue: If the Underwoods' Campaign commitment includes a naming opportunity, can they use their DAF to recommend a grant to the Campaign?

As a general rule, “naming opportunities” for sponsorships, tables and buildings have been considered “incidental” and not “impermissible benefits” unless it was actually advertising rather than a charitable gift.

More “Naming opportunity” facts are needed to know for sure.

- Example: Donors seeking the naming the College of Business (rather than the College choosing “honorific” naming) & negotiating the gift amount might be “more than incidental benefit.”

Enforceable Pledges

Impermissible benefit

DAF grants **may not be used to satisfy a financial obligation of any individual or entity**, including an enforceable pledge

Issue: If a DAF grant relieves a donor or other person from a legal obligation, that individual may be considered to have received an impermissible benefit.

Examples of enforceable pledges :

1. Pledge cards offered at events (including “fund a need” auctions) for donors to sign with the promise to pay.
2. Multi-year pledges for endowment or capital campaigns.
3. Letters of intent from donors for lifetime or legacy gifts.
4. Challenge or matching grant opportunities to incentivize other fundraising.
5. Verbal (written or oral) conversations pledging support that result in the nonprofit incurring expenses with reliance on future gifts.

Case Study: Solutions for Buster Posey

DAF Options in lieu of Campaign Pledge Agreement

Frank and Claire would like to finalize their Campaign commitment.

Issue: Campaign Commitments for DAF holders cannot create an enforceable pledge. How can DAF holders document their intention to support the Campaign?

Solution for Underwoods: Create MOU for Underwoods to recommend DAF grants.

“Claire and Frank Underwood intend to recommend a grant from “The Claire & Frank Underwood Donor Advised Fund” at the Community Foundation of Texas in the amount of \$100,000 each year for 5 years beginning in 2017. Grant recommendations must be accepted and approved by “The Claire & Frank Underwood Donor Advised Fund” at the Community Foundation of Texas . Our expression of intent is not intended to create a legally enforceable obligation.”

Solution for other donors: Provide an option on a solicitation, pledge card or MOU that allows donors to express their intention to recommend a grant from their donor advised fund.

DAF grants **may not be used to pay for all or any portion (whether or not tax-deductible) of the admission price to attend an event or gala** because the donor receives more than incidental benefit as a result of some portion or all of the grant.

Issue: “But for” the grant (presumably the deductible portion) the donor would not be able to attend the event/gala having only paid the nondeductible portion. As a result, the grant provided the donor with an impermissible benefit.

Example:

Tickets are \$100 for your fundraising event (banquet, gala, golf tournament).

The value of the meal and entertainment the attendee will receive is \$60.

- Donor wishes to pay \$60 out of pocket and \$40 from a DAF (“bifurcation”)*.
- ***TSFF (& other DAF sponsors) does not allow bifurcation based upon advice of legal counsel.**
- Donor wishes to pay \$100 from a DAF as a donation and then get discounted tickets at cost (\$60).

Donors must pay the entire cost of attending the event personally (both deductible and nondeductible portions).

Case Study: Solutions for Buster Posey

DAF & Gala Dinner Celebration

Frank and Claire would like to use their DAF to purchase tickets to Gala dinner.

Issue: “But for” the grant (presumably the deductible portion) the donor would not be able to attend the event/gala having only paid the nondeductible portion. As a result, the grant provided the donor with an impermissible benefit.

Therefore, DAF grants **may not be used to pay for all or any portion (whether or not tax-deductible) of the admission price to attend an event or gala** because the donor receives more than incidental benefit as a result of some portion or all of the grant.

Solution One: If UT has a traditional Gala, sell tickets to the event separately. Then DAF holders can recommend grant for charitable gift portion, not cost of attending the event.

Better Solution: Plan Campaign Launch & Success Celebrations with no admission fees.

Cultural & Other Memberships

Impermissible benefit

DAF grants **may not be used to pay for membership levels that provide more than incidental benefits.** Grants may be used to pay a 100% tax-deductible membership level fee as determined and specified by the institution (those membership categories where all of the benefits received are considered incidental).

Issue: Certain membership levels at cultural organizations (like museums) provide benefits including free admission, free tickets to special events, and other items of value. Certain benefits provided may be considered by the IRS as more than incidental.

Example:

- An annual membership is \$400.
- The value of the membership benefits (tickets to high-cost special events, extra guest passes, publications, gifts, other discounts) is \$150.
- **Donors must pay the entire cost of membership personally (both deductible and nondeductible portions).**

Donors may provide support by declining any goods, services, or free admission to events which have a cost associated with them as charged to the public in connection with DAF grants.

- The San Francisco Foundation requires DAF advisors to waive benefits and
- Grantee must have mechanism to track and honor DAF advisors' waiver request.
 - If Grantee does not agree, then TSFF will not issue the grant.

Alternatively, membership dues paid for by a donor advised fund grant may be in response to a special membership category where in connection with the grant no more than incidental benefits are provided.

- Your organization can create a donor advised fund membership category that provides only incidental benefits.
- **Charitable organizations should consult their tax advisor before creating membership categories.**



Proactive Planning with Donor Advised Funds

Proactive Planning With DAFs—Donors

DAF gifts/grants do not change current fundraising efforts

- Enhance relationships with your donors
 - Inform donors that your organization accepts DAF grants
 - Include DAF Giving as a “Way to Give” on website & in all resources
 - ✓ Include special section covering DAF giving “IRS rules of the road”
 - Make research about your organization’s financial health easy
 - ✓ Links to most recent IRS 990s for easy reference
 - ✓ Links to Audited Financial statements for easy reference
 - ✓ Note “DBA” information DAF holders /sponsors may need to make grant.
- Discuss DAF giving as a “way to give” early in all gift solicitations, including Campaigns
- Create and use MOUs that make DAF giving easy
- Work with DAF sponsoring organization to create grant agreement when “conditional” grant recommendations apply

Proactive Planning With DAFs—Internal Activities

Plan for Donor Advised Fund Giving/Grants

- Train all gift officers on DAF giving
- Review all development & stewardship activities
 - Beware of language which creates enforceable pledges; and
 - Activities that include “more than incidental benefits;”
 - Accurately value “benefits”—goods & services received, which reduce charitable gift value.
- **Use legal counsel as needed**
- Annual reporting
 - Create systems to track DAF grants as revenue source
 - ✓ Plan for DAF giving in annual and campaign MGO metrics
- Special considerations for Campaigns
 - Campaign counting guidelines
 - MOUs / intention to “recommend a grant;” not pledge agreements
 - Gift recognition, naming opportunities and celebrations

- Discuss DAF succession plan with your donors
 - Get to know named DAF “successor advisors”
- DAF agreements typically include “Disposition of Assets” plan for any assets remaining in DAF upon death of last fund advisor
 - Options will vary based on sponsoring organization’s DAF agreement
 - Remaining assets may be used for:
 - ✓ Final / terminating grant payable to your organization
 - ✓ Creation of an endowment to support your organization
- Ask your donors if they have / would considered including your organization
 - ✓ If yes, ensure that their plans can be accomplished
- **Include these donors as members of your Legacy Society!**

When Your Donor Has a Donor Advised Fund

Summary

Donor Advised Funds continue to be a key giving vehicle.

- Proactively plan for DAFs as a giving vehicle & inform your donors!
- Plan for DAF grants in fundraising campaigns.
- Review your policies, procedures and systems. Determine how to track DAF grant revenue.
- Review metrics for your fundraisers and the information and reporting needed to accurately track and connect them to the DAF grants their work results in.
- Train teams across the organization about DAFs and the impact these creative vehicles bring to your mission.
- DAF succession plans provide legacy gift opportunities.

Finally, enhance your relationship with your donors by helping them comply with the DAF rules so that giving remains one of life's greatest pleasures!

Thank You

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