Avoiding the Dark Side: The Ethics of Gift Planning

Help Your Donors Understand the Charitable IRA Law

Integrating Major and Planned Gifts in Dallas, Feb. 25-26

As Boomers Reach a New Milestone, How Will Their Charitable Giving Be Affected?
Avoiding the Dark Side: The Ethics of Gift Planning

Most gift planners realize a strong moral compass is a fundamental component of the code and craft of their profession. Many endorse and follow guidelines issued by organizations like the Association of Fundraising Professionals (AFP) and the Partnership for Philanthropic Planning (PPP) that are designed to encourage best practices in their dealings with donors. Gift planners with legal, accounting or various financial planning backgrounds abide by additional canons.

Even with all of these guidelines, there may be—and typically are—issues in even relatively straightforward gift planning situations that can muddy the water. As a result, most of us would agree that scenarios encountered in the real world are often more complex than they would appear on paper and the various codes of conduct and best practices may be easier to read than to apply.

In presentations to fundraisers, Robert Sharpe advises the use of three “60-second ethical tests” when navigating day-to-day issues.

- The Stomach Test: If your stomach gets queasy, think twice; your body may be trying to tell you something.
- The Relative Test: If you would not be comfortable suggesting a course of action for use with a loved one or close friend, maybe it is best not to suggest it to a donor.
- The “60 Minutes” Test: Would you be comfortable explaining what you are doing to an investigative reporter in national media?

Administering one or more of these simple tests can provide much needed guidance with the dilemmas that inevitably arise from time to time. But understanding a little more about some of the underlying issues affecting the aging donor population may help avoid problems too. (See box below for details.)

Mental capacity and financial decision

With record numbers of people aged 65 and older, this maturing senior population means that the number of people with Alzheimer’s or other forms of dementia will be growing dramatically. While only about one in nine people aged 65 or older has Alzheimer’s, the number grows to nearly one in three for those 85 and older. And the 85+ group is one of the fastest-growing segments of the population today. The Alzheimer’s Association advises that financial capacity and decision-making skills are among the first areas affected by mild cognitive impairment.

Senior fraud

In recent years there has been an explosion of frauds and scams targeting senior citizens. Many of these criminal activities exploit seniors through aggressive and deceptive marketing techniques. Some of these have involved a “charitable” component. Sometimes the “charitable” solicitation has been for a non-existent charitable organization; in other cases a charitable entity has actually been created to facilitate the criminal activities. In a handful of cases, the “charity” involved promoted charitable gift annuities or charitable trusts as a way to defraud seniors out of millions of dollars. A number of states and other sources routinely warn seniors about “charitable scams.”

The truth and nothing but the truth

Provisions of the Philanthropy Protection Act of 1995 made it clear once and for all that many popular gift planning techniques like charitable remainder trusts (CRTs), pooled income funds (PIFs) and charitable gift annuities (CGAs) were regulated securities under federal laws but could be exempt from registration requirements under certain well-defined circumstances.

In addition to refraining from any sort of misrepresentation, one of the requirements for exemption was to provide written disclosures concerning the material operation of the particular arrangement prior to the completion of the gift. Many Sharpe booklets and other communication materials have been designed with this requirement in mind. The law also emphasized that the anti-fraud provision still applies to these philanthropic activities.
Who me?
None of us want to believe we would intentionally take advantage of a donor with diminished capacity, participate in senior fraud or violate securities laws, but unfortunately it is possible to unintentionally cross the line into murky territory if one is not vigilant.

Tales from the dark side
Consider some of the following scenarios and practices: Would you ever consider providing build-up unitrust illustrations to a donor without consulting with the likely trustee about their projected investment returns? Believe it or not, this was a relatively common practice in the 1990s when very professional proposals would be given to the donor illustrating a high payout, often in the 8 to 10 percent range with a projected return of 12 to 14 percent.

What about gift annuity illustrations that show annuity payments based on certain amounts that indicate all or virtually all of that amount will be received by the charity? Rates set by the American Council on Gift Annuities are designed to provide a 50 percent gift residuum, so such an illustration could be seen as very misleading.

Have you ever seen planned gift marketing materials that imply a charitable gift annuity or a charitable remainder trust is better than other investments? Is it appropriate to illustrate significant tax savings without noting that the donor must itemize deductions to enjoy the benefits being illustrated?

Do you think it would be appropriate to use spyware or other "technological solutions" to track the activity of individual donors on your website without their knowledge and consent?

Could it appear there are some inherent conflict issues involved in helping to plan a donor’s estate when the charity is a beneficiary? Or paying to have that work done?

While the answers to these questions may be debatable in some circles, the answers can be determined on an individual basis by applying the three ethical tests outlined above.

Staying on the path
As you consider the path to take in a particular situation or generally with your career, some simple steps may help you avoid unintentionally slipping into a dark gray zone.

First, periodically review the Donor Bill of Rights, the AFP Code of Ethics and other professional canons that may be applicable.

Second, recognize that even though the vast majority of donors over the ages of 65, 75 and even 85 are legally and mentally competent, a significant number are subject to some degree of diminished capacity. Act accordingly on a case-by-case basis.

Third, avoid misleading marketing. Most senior fraud and scam cases involve very aggressive marketing that was intentionally designed to deceptively separate seniors from their money.

Fourth, remember that federal law requires a charity to refrain from misrepresentation in the marketing of many planned gifts and to provide written disclosure about the material operation of most popular gift planning arrangements prior to the completion of the gift.

If all else fails, remember the three 60-second ethical tests. If you can’t pass all three of the tests, pause, regroup and seek input from experienced peers or other professional resources.

Sharpe group training programs feature more in-depth explorations of ethical issues involved in working with seniors. For more information see SHARPEnet.com. 

Additional Resources

Administration on Aging
www.aoa.gov

American Association of Retired Persons
www.aarp.org/money

Commission on Law and Aging
American Bar Association
www.americanbar.org/groups/law_aging.html

National Center on Elder Abuse
www.nceea.aoa.gov

National Committee for the Prevention of Elder Abuse
www.preventelderabuse.org

National Council on Aging
www.ncoa.org

National Association of States United for Aging and Disabilities
www.nasuad.org

See also: https://philanthropy.com/specialreport/the-aging-of-america/61
Help Your Donors Understand the Charitable IRA Law

In December, the President signed into law the Protecting Americans from Tax Hikes Act of 2015, which extended and made permanent the charitable IRA provision. Do your donors know the benefits?

Sharpe has donor communication materials you can use to educate your donors about this law and how it will benefit them:

› Language for eblasts available on our blog at www.SHARPEnet.com/blog
› Free postcard PDFs available at www.SHARPEnet.com/product/iramarketing for immediate download to print

The following Sharpe booklets have been updated to reflect recent IRA gift legislation:

› Your Guide to Effective Giving in 2016
› Charted Giving Plans
› Giving Through Retirement Plans
› Planning for the Future

For details about these booklets and how to order them, visit www.SHARPEnet.com/publications.

Now that provisions allowing gifts directly from IRAs have been made permanent, it’s a great time to take stock of your gift planning publications.

Stock your gift planning library

Sharpe offers a complete library of booklets you can use in a number of ways. They can be used to provide additional information to interested donors and advisors or in targeted communications designed to promote various gift planning tools. These booklets are professionally written and designed to inform, educate and motivate your donors about some of the most popular and effective ways to make their charitable gifts. The industry’s most experienced team of writers, gift planners, graphic designers and technical experts produce these booklets so readers will find them interesting and easy to understand.

Many booklets include technical advisory sections that feature additional information to help advisors assist donors and clients in the gift planning process.

Personalize your booklets with your organization’s contact information and logo on the front and/or back cover. If you are interested in additional customization of graphics and/or content, ask a Sharpe Group representative.

You can order any of these booklets directly online at www.SHARPEnet.com/publications. Sharpe staff members can use their extensive experience to help you determine which booklets would be most useful for your program and help answer the questions your donors are most likely to have. Call 901.680.5300 to speak to a representative.

Now or Later?

Are you planning to inform your donors of the charitable IRA provision permanent extension now or at the end of the year? Tell us at https://www.surveymonkey.com/r/3TPLZ9Z or by calling 901.680.5300.
Sharpe Group on the Road

Sharpe COO Barlow Mann will speak at the ALDE (Association of Lutheran Development Executives) IGNITE International Conference in Chicago, February 21-24, 2016.

Sharpe Senior Consultant Aviva Shiff Boedecker will speak on "Looking for Gifts in All the Right Places: 10 Clues That You're Talking to a Planned Giving Prospect and What to Do About It" at the Planned Giving Forum of Greater Sacramento on February 25, 2016.

Sharpe Group representatives will be present at the AFP (Association of Fundraising Professionals) International Conference in Boston, March 20-22, 2016.

Please help us make our Give & Take publication better by taking a very brief survey at: https://www.surveymonkey.com/r/3TPLZ9Z or by calling 901.680.5300.

Upcoming Sharpe Group Seminars

An Introduction to Planned Giving

Discover how to build your planned giving program.

Learn the keys to effective communications with your donors. Examine the donor lifecycle and explore how you can help donors make larger gifts today and plan gifts through bequests, trusts, gift annuities and other vehicles. Learn to work effectively with those 65 and older who may make up much of your donor base—or soon will. This seminar is appropriate for those who are new to planned giving.

Gift Planning Toolbox

Acquire the knowledge you need to complete larger gifts.

Learn the basic workings of the most common gift planning tools, focusing on how to use them individually or blend them for maximum gift value. Determine which gift arrangements may be best able to fulfill a donor's personal and philanthropic objectives and learn to recognize the typical donor profile for each type of gift. Register for this seminar to benefit from training on various charitable planned gifts.

Integrating Major and Planned Gifts

Learn how major and planned giving can work together.

Discover how to help donors make the best gifts for their age, wealth and other factors, while meeting your current, capital and endowment needs. Learn how to interpret a donor's verbal and non-verbal clues to determine which giving option is right for them and how to help donors make larger charitable gifts that might not otherwise be possible. This seminar is for you if your organization has both departments and would like to bring everyone together, or if you or others are responsible for both major and planned gifts.

Chicago         July 11-12, 2016

New York        March 7-8, 2016
San Francisco
March 29-30, 2016

Dallas          February 25-26, 2016
Chicago         April 11-12, 2016

See full agendas and register at www.SHARPEnet.com/seminars or call 901.680.5318 with questions.
According to a recent Pew Research Center study, most people don’t feel as old as younger people perceive them to be. The average respondent to the Pew survey considers 68 the beginning of old age, yet just 21 percent of those 65-74 consider themselves old. Even among those 75 and older, only 35 percent consider themselves old.

Perceptions of old age have changed as improvements in health and lifestyle have boosted the average life expectancy in the United States. In 1910, the average American life expectancy at birth was 50 and those aged 70 had a life expectancy of 9 years. By 2010, the average life expectancy at birth was 78 and the average 70-year-old could expect to live 15 additional years. Even an 80-year-old in 2010 could expect to live another 9 years.

Beginning in 2016, the oldest baby boomers will be turning 70. While most won’t want to admit it, they will be in what has normally been thought of as the “older” age bracket beginning at age 65, the traditional age of retirement. (See Sharpe Gift Planning Matrix at right.) According to a 2014 Gallup poll, most Americans age 70 and older have retired or will soon be retiring from the workforce. In fact, Gallup reports the most popular retirement age in America is just 62.* After retirement, many boomers will be moving on to a new phase of life, during which they expect to have more time for hobbies and other pursuits, including volunteering and otherwise becoming engaged in charitable endeavors.

**The next generation of givers**

Those over 65 have traditionally been a reliable source of charitable giving, through both outright and planned gifts. As the bulk of them move into this age range, the baby boomers are replacing the Silent and GI Generations as America’s most generous generation. In spite of all the talk about acquiring younger donors, IRS data and other studies reveal that baby boomers contribute more total money to charity than any other generational group. According to a recent survey, boomers represent 43 percent of total U.S. giving with 51 million donors. Some 72 percent of baby boomers give to charity.

With many at the peak of their earning potential and others newly retired, boomers have reached the prime age for charitable giving. Both household income and wealth tend to increase with age, and income and wealth traditionally peak between age 50 and 70. Since 2000, the 65+ age group has seen its average wealth levels increase rather dramatically, while every other age group under that range has suffered a decrease. According to the U.S. Census Bureau, those 65 and older enjoyed a 17 percent increase in average net worth between 2000 and 2011, with the 65-69 age range seeing an even more dramatic 26 percent rise. By contrast, younger age ranges suffered anywhere from a 5 percent loss to a 41 percent loss in household wealth during that period. See chart on the following page.

The lifecycle of a typical donor

As the older members of the Silent and remaining members of the G.I. Generation approach extreme old age, most will gradually stop making regular current gifts. Many will, however, be finalizing their estate plans and fueling the majority of estate gifts over the coming decade. Keep in mind that the life expectancies for baby boomers range from 14 years for a 70-year-old male to 31 years for a 52-year-old female, and couples of those ages might be expected to live even longer.

Younger donors, such as Gen Xers and Millennials, will begin to support more charitable organizations in greater numbers and with greater amounts as their wages increase and time and resources allow, based on their stage of life.

Boomers, however, are currently in the sweet spot for major outright giving. Now is the time to educate your donors about charitable gifts that will help them fulfill their personal, financial and charitable goals. Consider using a multichannel approach to reach donors in this demographic. Planned gifts that will hold special appeal to wealthier members of this age group include outright gifts of non-cash properties, charitable trusts for terms of years, charitable lead trusts and deferred gift annuities. It is also time to begin encouraging them to include charitable interests in their estate plans as well.

Make sure you have the most complete age and wealth information available about your donors so you can identify which marketing appeals will be most appropriate for them at their particular stage in life. This is your chance to help your boomer donors give in ways that will lead to maximum impact on your organization and maximum satisfaction for them.

To learn more about how to help your donors choose the best ways to give at their stage in life, contact a Sharpe representative at 901.680.5300 or info@sharpenet.com. You may also wish to attend one of Sharpe’s popular seminars. Information is available at SHARPEnet.com.
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