When the Donor's Advisor Manages CRT Investments

BY K. GENE CHRISTIAN AND SARAH MARKUSON

CFPs and CLUs are often the "gatekeepers" to our prospects.

With increasing frequency, prospective planned giving donors and their advisors pose questions to us for which they expect a simple answer. For example:

Will your organization serve as trustee, even if it will not be the primary remainder beneficiary of the trust?

What is the minimum funding amount for a charitable remainder unitrust you require in order to serve as trustee?

With the same measure of frequency, our typical answer is "it depends." The decision for our organization to serve as trustee depends on many factors — including the proposed funding amount, the type of asset(s) being used to fund the trust, the age of the donor(s), the payout rate, the up-front costs and any special circumstances.

However, there is one question to which we are able to provide an unequivocal standard answer, regardless of the proposed trust's size, funding asset, donor life expectancy or payout rate:

Question: Can the prospective donor's financial services advisor manage the CRT's investments?

Answer: Yes, a donor's financial services advisor can manage the CRT's investments with our organization providing trust administration services — as long as trusteeship is provided by another party, and as long as the projected net benefit to our organization "pencils out" (see May 1998 *PGT*, "Four Steps in Evaluating CRTs").

Relationship With Professional Advisors

Certified financial planners, life insurance agents and investment professionals have become increasingly sophisticated in their understanding about charitable estate planning. In particular, this group of professionals realizes the benefits a CRT may yield not only for their clients and charities, but their own businesses as well.

CFPs and CLUs are often the "gatekeepers" to the individuals we define as our major planned giving prospects. Even in our large metropolitan area, we find that professionals, and their clients, operate in tight circles of activity and communication. As planned giving officers, it behooves us to remember the powerful relationship between CFPs and CLUs and their clients — our prospective donors.

Over the years, our organization has focused a significant portion of its marketing efforts on providing high quality charitable estate planning educational programs, current literature on a variety of estate planning topics, and regular estate and tax updates to our professional advisor community. As a result, some of our largest CRT arrangements can be attributed to a CFP or CLU professional who, after working with a client for many years, recommended a CRT. Prospective donors often rely heavily on a particular professional advisor(s) who has helped them grow or sustain their wealth over the years. Again, it's a tight circle — one we should respect, not violate.

Partnering With the Donor's Financial Services Advisor

Even in the best working relationship between a charitable organization as trustee and a donor's investment advisor who wants to manage the CRT investments, there may be potential conflicts. In this environment, some of the issues that can complicate matters for the prudent charity serving as CRT trustee are:

- limited investment options
- lack of fund longevity
- mediocre returns or rankings
- up-front loads
- early surrender charges

Equally concerning, from the investment advisor's perspective, is the possibility that the charity, as trustee, may one day opt for a different investment strategy with its CRT assets.

What to Do

When donors, or their financial advisors, approach our organization about creating a CRT for which they desire fund management to be done elsewhere, our posture is to offer an agency agreement to cover the administrative function (see footnone). But we will only do so if our irrevocable portion of the trust's remainder value "pencils out." Under the terms of the agreement, we will perform all

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Counting Issue

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Do most CRT and gift annuity donors consider their gifts on par with bequest expectancies as the CASE Standards require? Should they? Given the irrevocable nature of these gifts, they should not be treated in a similar manner as a revocable bequest expectancy, even though neither gift is available until some time in the future.

Many organizations have created a third column just for irrevocable planned gifts. The only exception being charitable remainder trusts where the grantor has retained the right to change the charitable remainder beneficiary. Such CRTs are counted as revocable bequest expectancies.

The CASE Standards for testamentary pledge commitments also create some confusion. The standard for counting such gifts, "a credible estimate of the estate's future value," is vague. Should all bequest expectancies be valued to the same future date, or should that future date be the life expectancy of each donor?

Given the fact that the future value of the estate is estimated, how accurate can a discounted present value of that future value be? Such an estimate of an estimate is not overly reliable in communicating to the public the real value of the campaign.

Several organizations ask bequest expectancy donors to estimate the value of their proposed testamentary gift on the date they inform the organization of their intentions. This seems to be the most accurate, and donor-friendly, manner of counting such gifts. The mere fact that such gifts are listed as revocable future expectancies shows that the organization can neither use the gift today nor mortgage its future on the gift being available some day.

Finally, in counting realized testamentary gifts where the revocable expectancy was counted in an earlier campaign, two schools of thought emerge. The first is that the amount of the realized gift above the amount counted as an expectancy should be counted in the current campaign.

The second is that the entire amount of the realized gift should be counted as a cash contribution to the current campaign, as the expectancy was counted only as a revocable gift in a prior campaign. Additionally, the stewardship efforts required between the time of the expectancy and the realized gift should be reflected in the measurement of the development effort.

Two schools of thought emerge.

A Tune-up, Not an Overhaul

The CASE Campaign Standards serve a vital and valuable purpose. Adherence to a rational and reasonable set of guidelines serves the entire charitable community well. These standards, however, would be even more valuable were they reflective of the thinking of most planned gift donors and the practices of most organizations. ◇

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trust administration work for the third party trustee.

We will be responsible for the K-1s, 990s, trust re-valuations, income proformas and beneficiary payments. When appropriate, we will also serve as special trustee for hard-to-value assets and real property. However, we will do so with one proviso: Our organization has the right to resign if it appears that *any* activity associated with the CRT might jeopardize the projected remainder value.

So, with an agency agreement, the donor's financial advisor is able to maintain discretion over the CRT investments, but is relieved of trust administration burdens (which he or she would just as soon not deal with anyway). And, the charity is not held responsible for investment decisions, but can provide the "arms and legs" work associated with trust administration necessary to ensure the CRT remains viable year after year.

Conclusion

Of course, regardless of who serves as trustee, the trustee must equally weigh the interests of both the income beneficiary and the charity. Arrangements that allow for a donor's financial advisor to manage the CRT assets, with the charity performing administration, do not magically eliminate the potential for imprudent investment decisions.

However, by using an agency agreement for CRT administration, a charity can be safely protected from any fiduciary liability associated with the role of trustee. The donor, who most often will remain as trustee, can then allow the trusted investment advisor to place and oversee the CRT's investment portfolio. ◇

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Note: A copy of the agency agreement referred to in the above article may be found on PGT's web site at the conclusion of the article, posted in the "Selected Articles" section. (www.pgtoday.com)