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# THE ULTIMATE GUIDE TO PLANNED GIVING

A PRESENTATION BY PICKLER COMPANIES

# AN INTRODUCTION TO PLANNED GIVING

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PICKLER
WEALTH ADVISORS

- President and CEO of Pickler Companies, a family of award-winning firms consisting of Pickler Wealth Advisors, The Pickler Law Firm, and Pickler Accounting Advisors
- Wealth Advisor, Financial Planner, and Attorney in Collierville, Tennessee
- Built personal and professional life on the principles of community service, civic leadership, and philanthropic investment
- Lifelong public education advocate

# ABOUT PICKLER COMPANIES


- Pickler Companies is a family of professional firms including Pickler Wealth Advisors, The Pickler Law Firm, and Pickler Accounting Advisors.
- Located in Collierville, TN
- Because of the **unique synergy** between the three firms, we deliver intellectual capital, solutions, and advisory excellence.

# RECOGNIZED AS THE GOLD STANDARD

- **Pickler Wealth Advisors** is an award-winning, nationally-recognized independent wealth advisory firm.
- **The Pickler Law Firm** was named "Best Law Firm in Memphis" in 2019 and 2020 by *The Commercial Appeal*.
- ***Pickler Accounting Advisors*** *is an established and growing firm serving Tennessee, Mississippi, Arkansas, Missouri, and Oklahoma.*

Forbes BEST-IN-STATE WEALTH ADVISORS 2019 SHOOK RESEARCH™

FT FINANCIAL TIMES | Top Financial Advisers

I:O 2019 Invest in Others Catalyst Award WINNER

Memphis Most

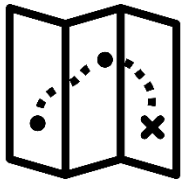
FIVE STAR WEALTH MANAGER

BARRON'S TOP ADVISORS

# ACCESS TO THIS PRESENTATION

- This presentation is available on our website at www.picklercompanies.com/planned-giving
- *Feel free to print the PowerPoint and take notes on it*
- *The recording of today's presentation will be available in the coming days on the website mentioned above*

SECTION 1



# PLANNED GIVING BASICS

## IT ALL STARTS WITH "WHY"

# PHILANTHROPY

# LOVE/CHARITY

- Care, caritas, philia
- Philadelphia, the city of brotherly love
- Amateur (from *amo*)
- The things we do for love

# 4 WAYS TO DO GOOD

# CHARITABLE GIVING

- Giving out of kindness, or a sense of human obligation, when the heart is moved, as when you see someone cold or hungry, or give for relief in a disaster.

# RESPONSIBLE PHILANTHROPY

- Giving when asked
- Giving like paying dues to organizations whose claim you recognize
- Checkbook giving
- What Tracy Gary calls “honored obligations”
- What charities call “sustaining gifts” or “annual gifts”

# STRATEGIC PHILANTHROPY

- Giving, often in larger amounts, on purpose after research and reflection with an eye to achieving specific results.

# BUT ALSO INVESTING FOR IMPACT

- Along with all of this, move investments to where they will do the most good – not only for the investor, but also for the world

# THE BOOMER LEGACY WEALTH WAVE

# LEGACY WEALTH WAVE

- The leading-edge Boomers are now 73
- $30 trillion will eventually pass from Boomers
- Over 10% of that is expected to go to charities
- This is the single greatest wealth transfer in history

# WE ARE ALL EQUAL...

- Top 10% give 96%
- Top 1% give 81%
- Top 10% of the 1% give 61%
- Top 1% of the 1% give 42%

# GIVING UP AMONG THE RICH

- The researchers found that itemized charitable contributions from the top 1%... – those earning roughly $500,000 or more a year – leapt by 57%
- For those earning $10 million or higher, it was up by 104%
- Yet donations from people at the lower end of the earnings scale fell... 34% for those on less than $100,000

"Donations from a Wealthy Few May Cost Us Dear," by Mary O' Hara, *The Guardian*

# IN OUR SHOP

- 97% of the money comes from 3% of donors

# GIVING, LIKE VOTING, IS IN DECLINE

- Total giving is about flat, hovering around 2% of GDP for decades
- But the composition is changing
- Ordinary givers have dropped from 66% of the public to 59% (2000 – 2012) and voting has dropped to a similar degree
- Giving by those making $1 million or more has dramatically increased

# CLARION CALL!

- Research on giving in the United States has now produced definitive empirical evidence to show a decline in the participation and amounts donated by “small” and “medium” (actually, median) donors and an increasing reliance on “large” donors

Patrick Rooney, National Philanthropic Quarterly, 2019

# OPPORTUNITY

- Legacy gifts may be 50-5,000 times larger than the donor's ongoing annual gift
- Any Ivy League university reports that 81% of the time, the legacy gift from a donor is larger than the sum total of the donor's lifetime gifts

# NOT NECESSARILY COMPLEX

- 80-90% of all planned gifts are simple bequests. It is a little hazy as to whether or not this includes life insurance beneficiary designations, beneficiary designations on IRA's, or transfers by simple titling of assets, but you get the idea
- Legacy gifts do not have to be complicated

# TARGETING THE RIGHT DONORS

- Those with no heirs, or only distant heirs, are far more likely to name a charity
- A higher percentage of Boomers than other generations are childless

# OLD PERSPECTIVE

- Build wealth without regard to social impact
- Give some away later or at death to do good

# NEW PERSPECTIVE

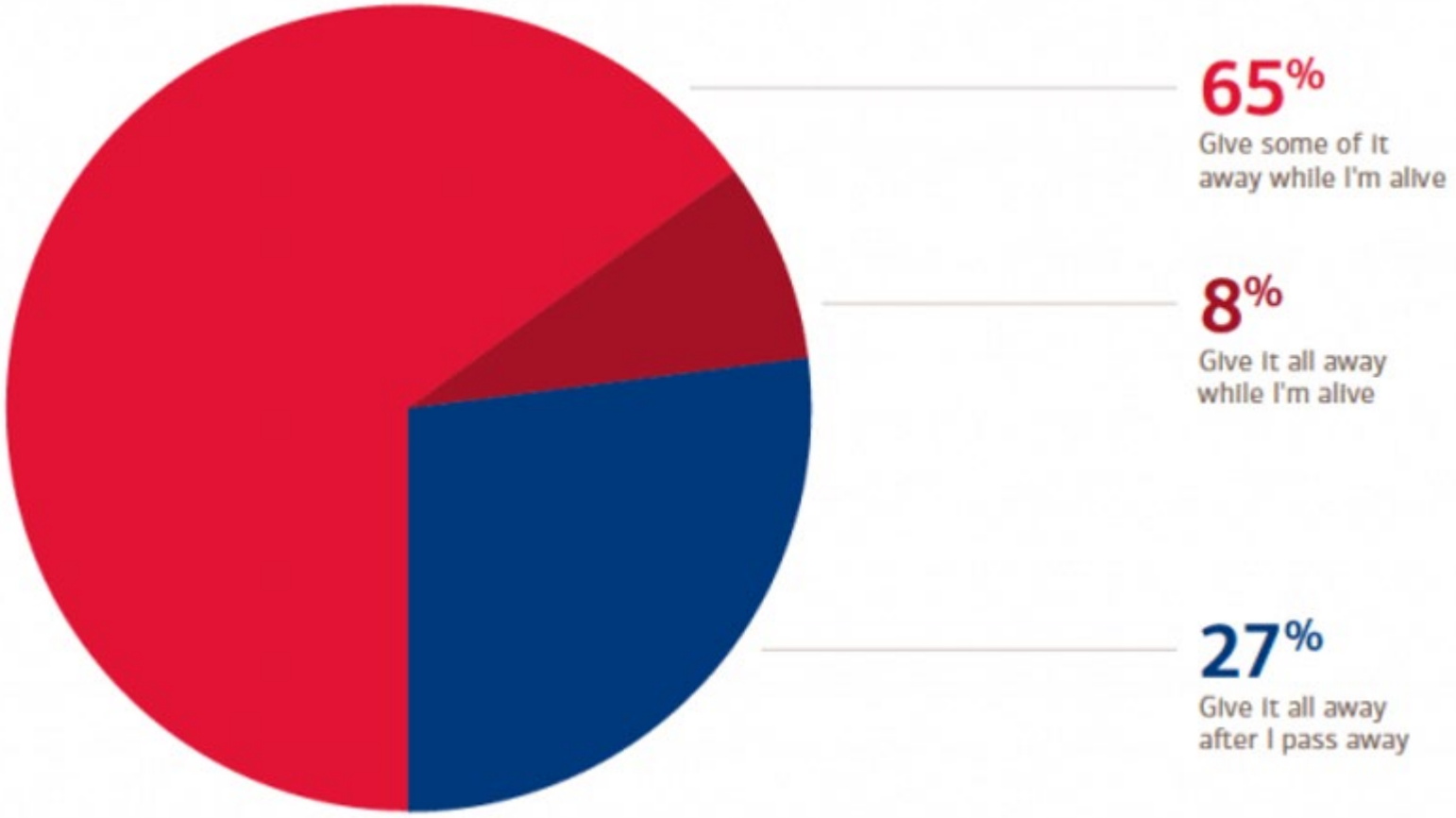
- Create and invest wealth with impact in mind
- Give while living and at death for impact, too

# GIVING WHILE LIVING

- Boomers generally prefer giving while living
- Their legacy thus completes an ongoing intention

# TIME PREFERENCE

- Boomers say…



# PLANNING ISSUES

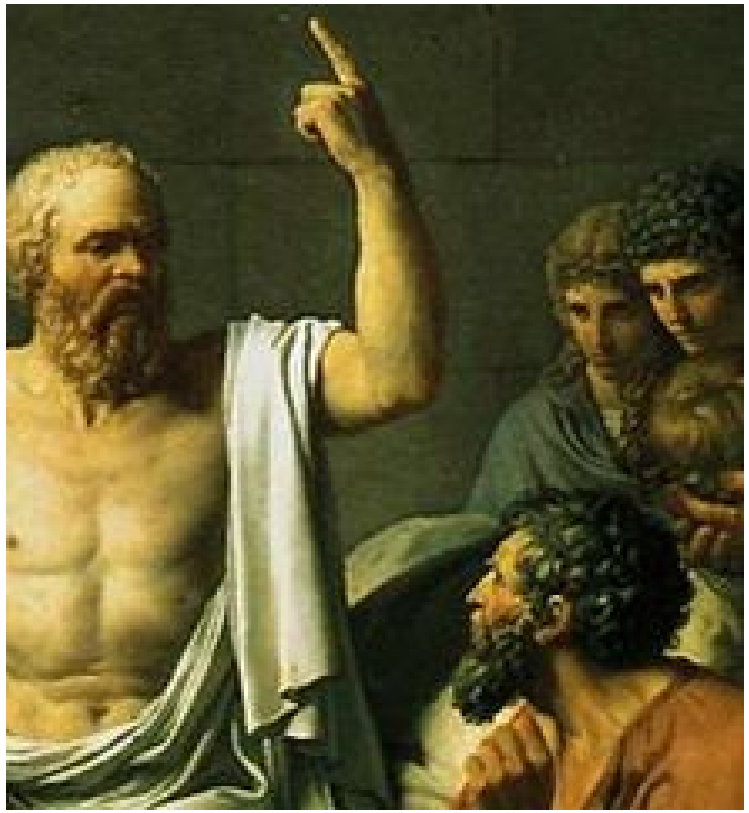
- How much do I have?
- How much do I need?
- How much is the right amount for heirs?
- When, and it what form?
- What is my charitable capacity?
- Should I live a legacy or leave one?
- How well am I prepared for long-term care?

# MORE THAN MONEY

- How do I pass on meaning as well as money?
- Values, traditions, a way of life
- Heirlooms and special objects
- Memories

# EUDAIMONIA

- “The only wealth you will keep forever is the wealth you have given away.”



# WHAT THE WEALTHY SAY THEY WANT

- To make the most of full personal potential (72%)
- To create a legacy they can be proud of (71%)
- To make a positive contribution to society (63%)
- To give back to those less fortunate (56%)

2018 U.S. Trust Insights on Wealth and Worth

# WHAT WOULD YOUR CLIENTS SAY?

- "Nearly all wealthy donors (94%) would like to be more knowledgeable about at least one aspect of charitable giving"

The U.S. Trust Study of High Net Worth Philanthropy, 2016

# TOP FIVE THINGS THEY WANT

1. Identifying what I care most about and deciding where to give (67%)
2. Understanding how much I can afford to give (50%)
3. Allocating time to volunteering and getting involved with the nonprofit (45%)
4. Monitoring giving for impact (37%)
5. Structuring giving for tax efficiency (23%)

The U.S. Trust Study of High Net Worth Philanthropy, 2016

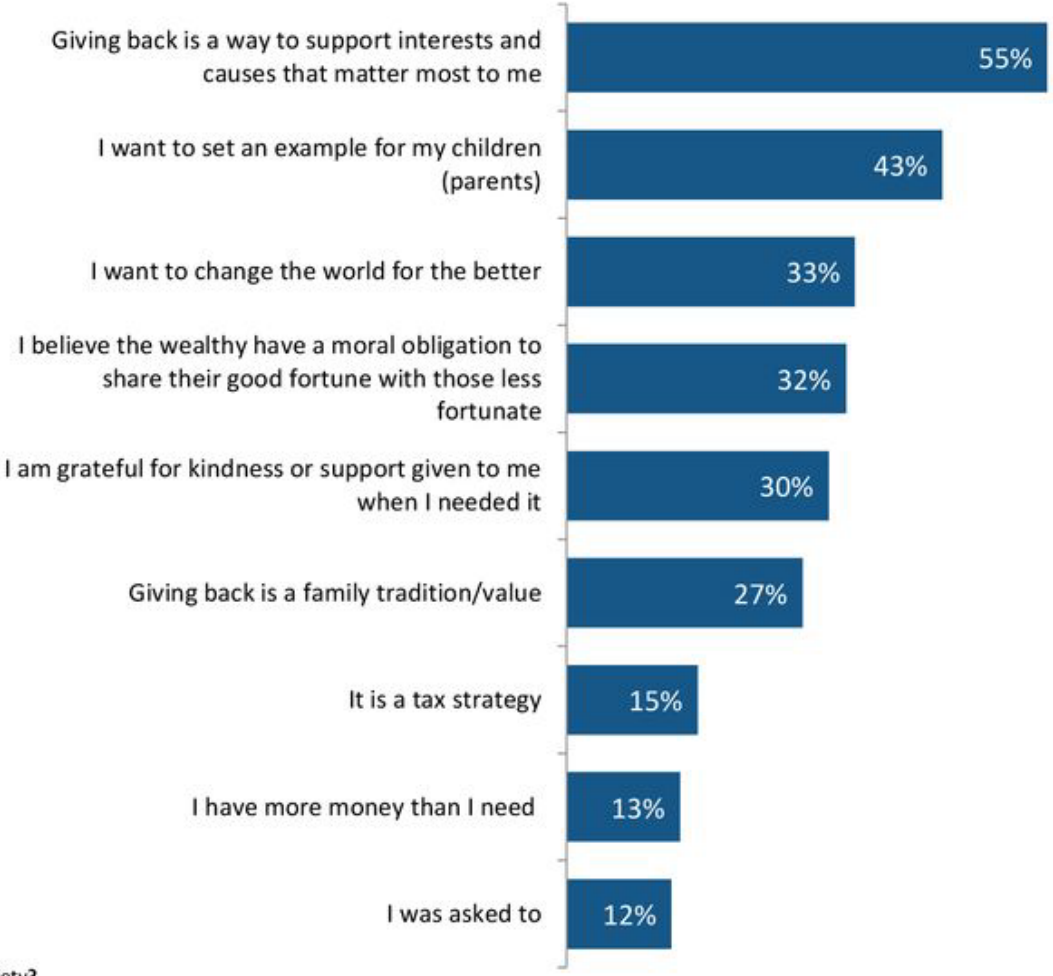
# TOPICS OF INTEREST

- "Interests range from learning how to identify the right to volunteer opportunities (42%), to becoming more familiar with nonprofits and how they serve their constituents' needs (29%), to exploring how to engage the next generation in philanthropic giving (20%)."

The U.S. Trust Study of High Net Worth Philanthropy, 2016

# Multiple and varied reasons for wanting to give back

- The primary reason for wanting to give back to society is to support the interests and causes that matter most to the person due to motives shaped by their values, experiences and perceptions
- Four in 10 (43%) wealthy parents feel that giving back is an important example to set for children
- One-third of the wealthy want to change the world for the better, a desire expressed equally across all age groups and income levels
- One in three give in gratitude for kindness they received
- Few (15%) give back primarily because it is a tax strategy




**Q29.** Which of the following describes your reasons for giving back to society?

U.S. TRUST

# STARTING POINT FOR MANY

Gifts are many and small with no connection to a deep passion or overall strategy

No real focus, or intention

Note: Such faithful gifts are the lifeblood of nonprofits – unrestricted, annual gifts

- Honored obligations
- Checkbook giving
- Pray and spray philanthropy
- Scatter-shot giving
- Peanut butter philanthropy
- Reactive giving
- Faithful giving

# PRIVATE ACTION IN A PUBLIC SPACE

- “Philanthropy is private action in a public space.” – H. Peter Karoff

# PETER SAYS IT BEST

- "The alignment of one's passion to one's giving is often elusive but worth the search," writes TPI Founder Peter Karoff. "The reward is that your gift giving becomes the best possible articulation of your core values and belief systems and at the same time becomes a direct link to those issues within community and society that you deem to be of greatest significance..."

# "ALL PHILANTHROPY IS PERSONAL…"

Tom Tierney, coauthor of *Give Smart, Philanthropy That Gets Results*

# RABBI MORDECHAI LIEBLING

- Your last will and testament is your final teaching. What do you want it to say?

# MICHAEL DALTON AND TOM LANGDON

- "Estate planning may be broadly defined as the process of accumulation, management, conservation and transfer of wealth considering tax, legal and personal objectives. The goal of estate planning is efficient transfer of assets."

Dalton and Langdon, *Estate Planning for Financial Planners*, 2009

# CHARLES COLLIER

- "The highest and best purpose of the estate planning process is, for me, to facilitate the effective transfer of an appropriate amount of financial assets to succeeding generations of family members in a way that will improve the life course."

Collier, *Wealth in Families*, 2006

# DAUNTING IN SCOPE AND DEPTH

- Tax, tools, techniques
- Financial and estate planning
- Strategic grant-making
- Major gift and planned gift fundraising
- Investments
- Life insurance
- Legal documents
- Accounting
- Business valuation

# THE LEARNING CURVE

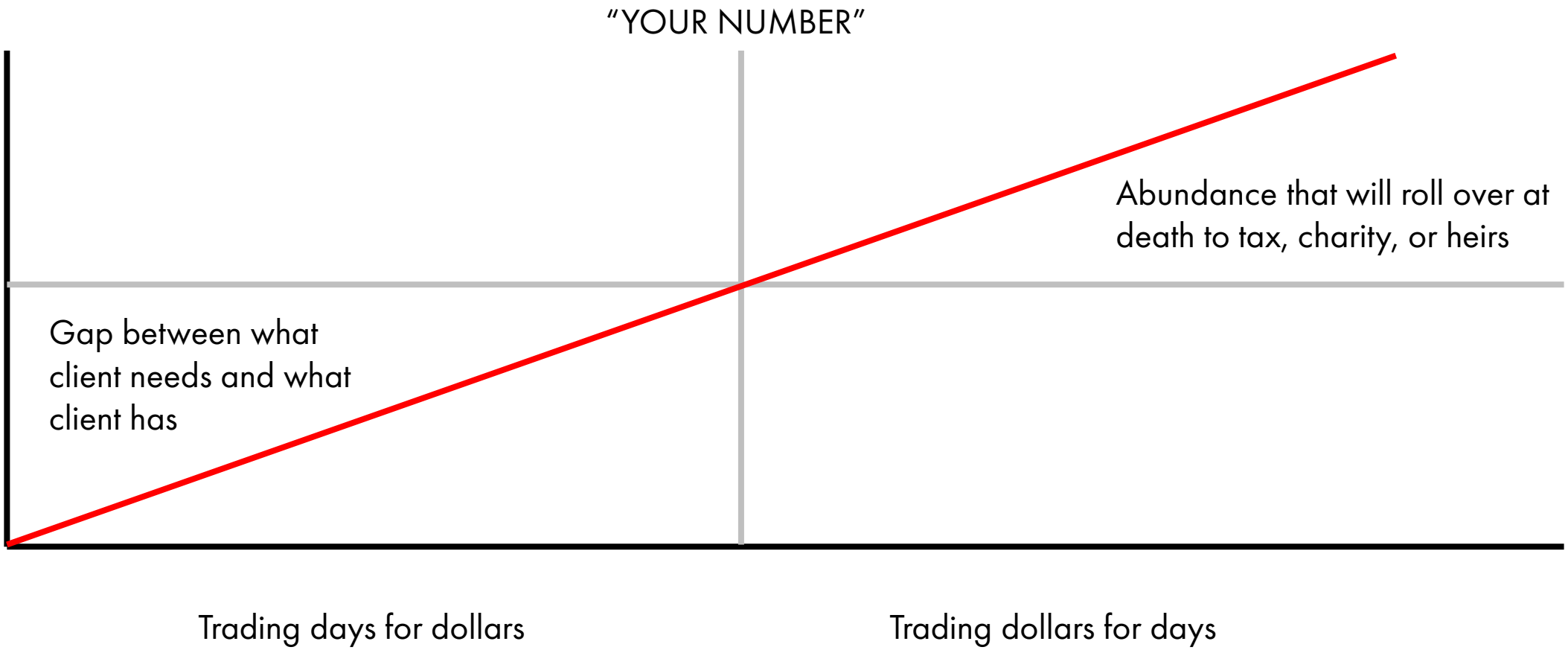
# PERSONAL FREEDOM

- The very wealthy have great freedom to shape not only their lives and those of their family, but also of those of people in their community

# MORAL IDENTITY

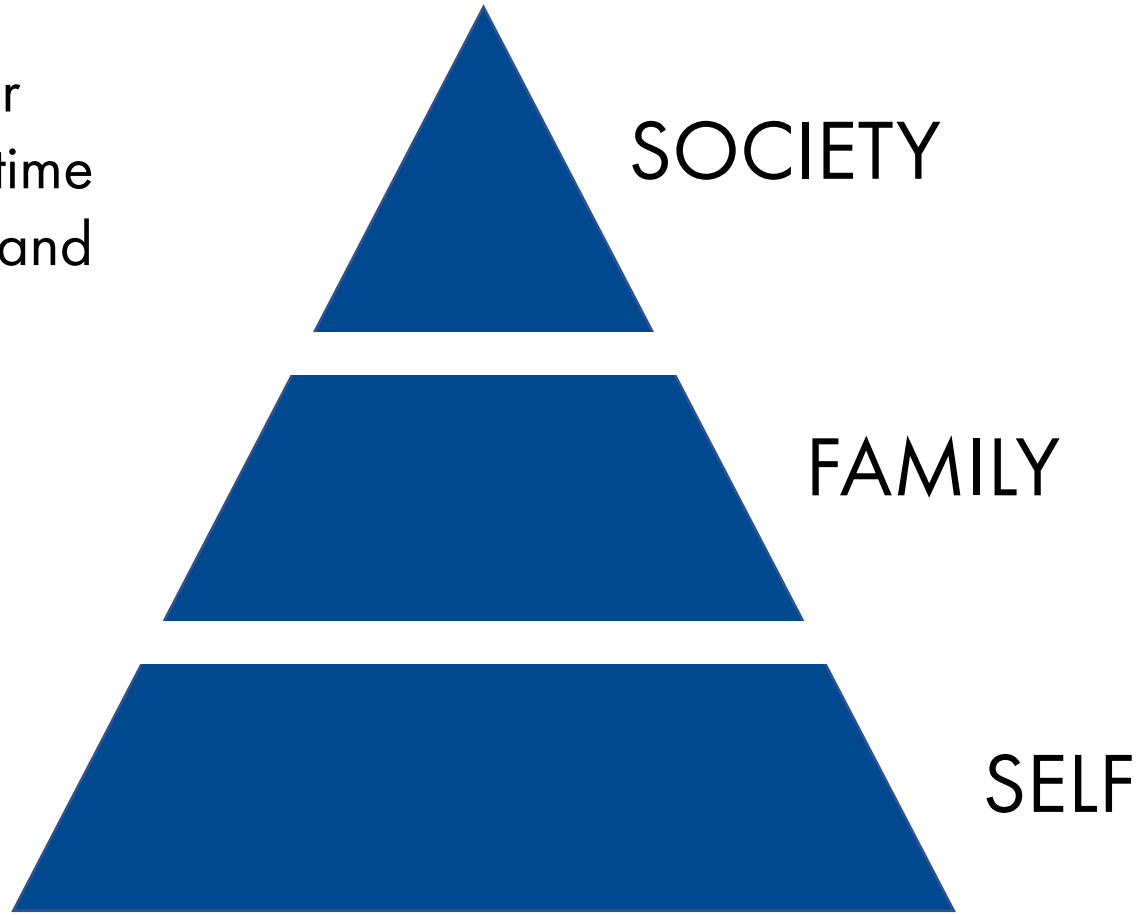
- Do we do what we are or are we what we do?
- Does character drive behavior?
- Does behavior form character?

# FINANCIAL INDEPENDENCE



# FROM SCOTT AND TODD FITHIAN

- Consider total lifetime sources and uses of capital




- How much is available for social capital?
- How much is enough for heirs?
- Quantify how much is enough for self

# PLANNING ISSUES

- Legacy as an estate planning flowchart
- Legacy as minimizing tax liability
- Taking thoughtful care of the material goods
- Legacy as the final teaching and the culmination of a life well lived
- Legacy as supporting the life course of the heirs (Collier)
- Legacy as what lives on: symbolic immortality

# MORAL HEROISM

- Through legacy we visualize ourselves as having led lives of significance in which something important lives on through people, traditions, and organizations we have loved.

# MORAL BIOGRAPHY OF WEALTH

- Another name for this is “spiritual autobiography” or a “Gospel of Wealth,” after a book of that title by Andrew Carnegie
- The “protagonist,” the hero, seeks to align his moral compass with personal freedom and financial capacity

# THE TEST

- "The primary test for both the poetry and the practice of philanthropy is integrity – was our purpose noble, were we true to it, and did we in all instances, deeply listen to the community of interest we presume to serve."

# WHAT IS PLANNED GIVING?

# PLANNED GIVING IS ABOUT RELATIONSHIPS

- Where Annual Giving is more transactional, Planned Giving is about **relationships** and developing a customized plan for each individual.

- The relationships that lead to Legacy Gifts are steeped in **time**, in **trust**, and – in a nutshell – **commitment**.

# WHAT IS PLANNED GIVING?

- A charitable gift made during lifetime or upon the death of a donor made as part of an overall financial or estate plan.
- Planned Giving is also referred to as Gift Planning or Legacy Giving.
- It reflects a donor's intentions to contribute a major gift to an organization beyond their lifetime.
- Unlike an annual gift – an outright gift made for current use – a Planned Gift is for the future.

# WHAT IS PLANNED GIVING?

- Planned Giving is not limited by donor's current wealth. Gifts are not dependent on the donor's regular income. Most Planned Gifts take the form of:
  - Life Insurance
  - Stocks and Bonds
  - Business Interests
  - Real Estate Holdings
- This is why Planned Gifts are typically <u>TEN</u> times the size of the donor's annual gifting capacity.

# TOP 3 VEHICLES FOR PLANNED GIVING

# 1. BEQUEST

- A gift – typically cash, personal property, real estate, stocks, or bonds – left behind in a will for a group, individual, or organization.
- There are 4 types of Charitable Bequests:
  1. General Bequests: gifts of property taken from the assets of an estate
  2. Demonstrative Bequests: gifts that come from a source, such as a bank or investment account
  3. Specific Bequests: gifts of personal property such as cash, jewelry, or other tangible assets
  4. Residuary Bequests: gifts that come from the remainder of any debts or expenses that have been paid along with other bequests that have been made
- A 2016 study by Indiana University reported that 42% of all planned gifts were bequests

# 2. ANNUITY

- A fixed sum of money paid to an organization each year
  - Normally structured as a simple contract between the donor and the charity
- Charitable Gift Annuities are where a donor transfers cash, securities, or other assets to the organization in exchange for a partial tax deduction
- They can also be structured to produce a lifetime stream of income to the donor from the organization itself

# 3. TRUST

- A legal entity whereby an individual holds or invests property as its titular owner
  - Titular Ownership: an investment interest that excludes the ability or right to receive the financial benefits of ownership or investment such as distribution of profits, dividends, proceeds of sale, or similar returns on investment
- This structure creates tax benefits that could allow appreciated securities or other assets to be contributed to a trust, sold without capital gains taxation, as well as create significant potential charitable deductions to donor
- A trust can be for one or more beneficiaries

# 3.TRUST (CONTINUED)

- Two types of Charitable Trust
  1. Charitable Remainder Trust: A tax-exempt trust created to reduce an individual's taxable income by dispensing their earnings to the beneficiaries of the trust over time. The remainder of the trust goes to the organization as detailed in the trust.
  2. Charitable Lead Trust: This is the inverse of a Charitable Remainder Trust. The trust provides financial support to one or multiple causes over a specified period of time. The remainder of the trust then goes to the other identified beneficiary (family members, friends, etc.)

# PLANNED GIVING: A LIFELONG RELATIONSHIP

- Annual Funding is Dating
- Major Gifts are Commitment (Capital Campaign)
- **Planned Giving is Marriage**

# MOTIVATORS BEHIND PLANNED GIVING

# MOTIVATORS BEHIND PLANNED GIVING

- Planned Giving preserves a donor's legacy
- Donors typically begin thinking about Planned Giving as they near retirement age, between the ages of 40-60
- Donors tend to give to organizations that act in accordance with their personal values and beliefs
- As a result, their Planned Gift symbolizes the relationship they have cultivated with the cause with which they have invested the time
- They want their contribution to help secure the future of the organization
- It also represents their commitment to positively impact their community in an actionable way

# WHY PLANNED GIVING?

# WHY PLANNED GIVING?

- Creating a Sign of Legitimacy and Trust
  - Planned Giving is a hallmark of legitimate, prestigious organizations that are serious about tong-term goals
  - Donors want to ensure their money goes to a successful nonprofit
  - Savviest donors are well aware of Planned Giving options
  - Failure to have a quality Planned Giving program can send a message that you are not serious about your future
- Spicing up Funding by Providing Variety
  - Trust is built by considering the diverse needs of many
  - No two donors are alike
  - Planned Gifts do not cannibalize annual funds

# WHY PLANNED GIVING? (CONTINUED)

- Getting Bigger Gifts
  - Only 5% of America's wealth is in liquid assets
  - The rest is where Planned Giving comes into play:
    - Retirement Plans
    - Real Estate
    - Business Interests
    - Collectibles
  - Planned Gifts are usually the largest gift a donor makes to an organization

# WHY PLANNED GIVING? (CONTINUED)

- Making it Easy to Give and Receive
  - People will appreciate you more – because it shows you care!
  - Planed gifts are:
    - Easy to market
    - Easy to give
    - Easy to receive
  - Especially beneficiary designations!

# WHY PLANNED GIVING? (CONTINUED)

- Creating Accessibility to All
  - The majority of people are not wealthy
  - Most Planned Gifts come from poor and middle-class donors
  - A donor may not be able to contribute anything now, but through Planned Giving can offer a large amount in the future

# WHY PLANNED GIVING? (CONTINUED)

- Building Relationships
  - Fundraising is all about relationships
  - Relationships are built on Trust
  - Planned Giving helps establish that Trust and helps fundraisers cultivate more giving opportunities
  - Just like any other business, charitable organizations are built on "repeat customers"

# WHY PLANNED GIVING? (CONTINUED)

- Empowering Donors
  - Donors don't just give to help a cause – they give because it makes them feel good!
  - Planned Giving is a way for anyone to leave a Legacy
  - Whether it is for a naming right on a building <u>or</u> having their gift acknowledged in a newsletter
  - It's about doing well by doing good and making people feel good!

# WHY PLANNED GIVING? (CONTINUED)

- Stability and Legacy
  - Planned Giving not only drives and develops permanent support, but it also communicates a **sense of permanence** of the organization to donors.
  - Our mission will be **served for generations**.
  - Planned gifts are, on average, **TEN** times greater than the prior giving capacity of the donors during their lifetime.

# PLANNED GIVING PROCESS

# THE ART & SCIENCE OF PLANNED GIVING

- **Science** of finding best Planned Giving prospects
- **Art** of moving from data-mining to relationships
- Then presenting customized giving programs depending on:
  - Personality
  - Financial Situation
  - Level of Giving Ability
  - Affinity for Organization

# PLANNED GIVING OPTIONS

# SIMPLE GIFTS

1. Bequests
2. Stock and Appreciated Securities
3. Life Insurance – Lifetime Gifts
4. Life Insurance – Estate Distributions (Beneficiary Designations)
5. Business Interests, Closely-Held Stock, Relationship
6. Tangible Personal Property
7. Intellectual Rights
8. Real Estate
9. Retirement Plan – Lifetime Gifts (IRA Charitable Distribution)
10. Retirement Plan – Estate Distributions
11. Donor-Advised Funds
12. Memorial and Tribute Gifts
13. Restricted/Endowment Gifts

# GIFTS THAT PAY INCOME

1. Charitable Gift Annuity (Immediate)
2. Charitable Gift Annuity (Deferred)
3. Charitable Gift Annuity (Flexible Payment)
4. Remainder Annuity Trust
5. Remainder Unitrust
6. Flip Unitrust

# ASSET-PROTECTING GIFTS

1. Charitable Bargain Sale
2. Charitable Lead Trust
3. Retained Life Estate

# CHARACTERISTICS OF DONORS


# Profile of a Legacy Donor

- Volunteers: "I give! I Volunteer! Clearly I am all in."
- Loyal: "I gave a small gift every month for 15 years."
- Loyal (continued): "I gave a gift 25 years ago and then again just recently. That means you've been on my mind for a quarter of a century."
- Female: Women are more likely to include charity in their estate plans."
- Childless: Some say this is the biggest predictor of a legacy gift prospect.
- Over 65: "At this age I'm starting to think about how I'll be remembered after I'm gone."

Planned Giving is based upon building a Relationship.
It is **NOT** a transaction.

# 21 TOUCHES

## DONOR RELATIONSHIP DEVELOPMENT

# 21 TOUCHES

1. She sees the page on your website with stories of people just like her who have made planned gifts.
2. She gets an email from you with a helpful article on estate planning.
3. She sees a planned giving ad while flipping through your organization's newsletter.
4. She receives an invitation to a donor event.
5. She gets a friendly just-saying-hi email from you.
6. She receives a Happy Thanksgiving card.

# **21 TOUCHES** (CONTINUED)

7. She accepts the invite to like your organization's Facebook page, where planned giving messages appear at least weekly.
8. She unexpectedly receives a Happy Half Birthday card.
9. She notices your email footer: "A gift through your will costs you nothing during your lifetime."
10. She resonates with a story you mailed written from the point-of-view of one of her peers who made a planned gift.
11. She gets an "Easy Ways to Give" postcard towards the end of the year.
12. She appreciates getting a phone call from someone influential at the organization.

# **21 TOUCHES** (CONTINUED)

13. She loves the handwritten thank you note that came after her last donation.
14. She is honored to be asked to tell her story of being a supporter.
15. She appreciates the free book on estate planning you sent her.
16. She smiles at the Valentines Day postcard she gets "Are You Our Secret Admirer?"
17. She reads all of the informational articles you send during National Estate Planning Awareness Week
18. She accepts your invitation to take her on a tour of your organization's new facility and out to lunch afterwards.

# **21 TOUCHES** (CONTINUED)

19. She laughs at the cartoon about writing your will on your Facebook page.
20. She got teary-eyed watching the video you sent her with an elderly man talking about the legacy he wanted to leave to his family and the causes he cared about.
21. She notices the message printed on her monthly giving receipts: "Please consider making us part of your legacy with a gift in your will."

**Then one day, she finds herself sitting in her attorney's office to update her will. She says, "There's a charity I'd like to include in my will..."**

# KEY TAKEAWAYS

# KEY TAKEAWAYS

- Creating a sign of **legitimacy and trust**
- Spicing up funding by providing **variety**
- Getting **bigger gifts**
  - Only 5% of America's wealth is in liquid assets
- Making is **easy** to give and receive
- Creating **accessibility** to all
- **Building relationships**
- **Empowering donors**

# ESTATE PLANNING AND PLANNED GIVING

RUSSELL HAYES, ESQ

# RUSSELL HAYES, ESQ

- Attorney at The Pickler Law Firm
- Practice areas include Estate Planning, Wills, Revocable and Irrevocable Trusts, Probate and Estate Administration, Trust Administration, Business Law, Family Law

SECTION 2

# ESTATE PLANNING

## UNDERSTANDING BEQUESTS, ANNUITIES, & TRUSTS

# BEQUEST / DEVISE

- A gift left behind in a Will for a group, individual, or organization
- A 2016 study by Indiana University reported that 42% of planned gifts were bequests

# TYPES OF BEQUESTS

- General Bequests: gifts of property taken generally from the assets of an estate
- Demonstrative Bequests: gifts that come from a specific source, such as a bank account or investment account

# **TYPES OF BEQUESTS** (CONTINUED)

- Specific Gifts: gifts of specific property
- Residuary Bequests: gifts that come from the remainder (or residue) of the estate, after expenses and other bequests have been made

# ANNUITIES

- A fixed sum of money paid to an organization each year
- <u>Charitable Gift Annuities:</u> donor transfers an asset to a charity in exchange for a tax deduction and an income stream

# TRUSTS

- A legal entity established by a Grantor whereby a Trustee holds investments or property on behalf of a Beneficiary
- Can create tax benefits
- Can be created for one or more beneficiaries
- Can be managed by an individual or professional trustee

# REVOCABLE LIVING TRUST

- Most common type of trust
- Very useful estate planning vehicle:
  - Staggered distributions for children
  - Provisions regarding proper distribution of retirement accounts
  - Gifts to grandchildren
  - Special needs or incapacitated beneficiaries
  - Probate avoidance
  - Maintaining privacy

# **REVOCABLE LIVING TRUST** (CONTINUED)

- A private contract
- Maximum flexibility
  - Grantor, Trustee, Beneficiary are all the same
  - Grantor gives up no control
  - Provides ease of access upon death
  - Often sub-trusts are created for children or grandchildren upon the death of the Grantor
- Post mortem gifts can be made, similar to a Last Will and Testament
- Often best practice to use percentages
- Lump sum gifts can cause the family or heirs of the decedent to receive very little if the estate decreases in value following the drafting of the trust

# CHARITABLE REMAINDER TRUST

- The grantors establish this trust with an upfront lump sum gift
- The Grantor (and often the grantor's spouse), will receive income payments at least annually for the rest of their lives, or for a term of years
  - Trust is irrevocable
- At the end of the trust's term, the charity will receive the trust's assets
- Similar to a charitable gift annuity

# CHARITABLE REMAINDER TRUST (CONTINUED)

- Often used with highly appreciated assets
  - The owner contributes the appreciated portfolio to the CRT
  - This trust be used in a year in which the owner had a large amount of income
  - The owner then receives an immediate income tax deduction based on the value of the appreciated asset
  - When the charitable trust sells the assets, not subject to capital gains tax
  - Income taxes will be deferred over the life of the trust

# CHARITABLE REMAINDER TRUST (CONTINUED)

- Often used with highly appreciated assets
  - A Charitable Remainder Trust typically lasts for the joint lifetimes of the grantors, or for a term of years, not to exceed 20 years
  - The Grantors can serve as the Trustees
    - If the donor wants to reserve the option to change the charitable beneficiary, a third party trustee should be used
  - The beneficiary can be almost any type of charitable organization:
    - Public charities
    - Private foundations
      - Including the grantor's own private foundation
    - Religious organizations

# CHARITABLE REMAINDER TRUST (CONTINUED)

- Estate tax
  - The trust is not ordinarily considered a part of the grantor's estate
- Use the income provided by the trust to purchase life insurance for the heirs
  - This enables the grantor to:
    - Receive a nice tax deduction
    - Provide generously to charities upon death
    - Still pass on an equivalent value to family through the life insurance policy

# CHARITABLE LEAD TRUST

- Inverse of a Charitable Remainder Trust
- The trust provides financial support to one or more charitable beneficiaries for a term of years
  - Used for high net worth individuals to mitigate estate tax
    - Set aside a portion of funds which will be passed on to heirs
    - Often, the heirs will receive more than the value contributed to the trust
      - Investment performance often will exceed the amount that must be given to the charities
      - Amount is determined by IRS interest rate guidelines (applicable federal rate)
  - Irrevocable trust

# CHARITABLE LEAD TRUST (CONTINUED)

- Non-grantor remainder beneficiary
  - The term is typically 20 or 30 years, or the life of the grantor.
  - At expiration, the assets pass to the grantor's heirs or other stated beneficiary
  - Remainder beneficiary typically receives the assets, estate tax-free
- The charitable beneficiary will receive either:
  - A fixed payment amount (annuity trust), or
  - A percentage of trust assets (unitrust)

# CHARITABLE LEAD TRUST (CONTINUED)

- Popularized by Jackie Kennedy Onassis
  - Her situation
    - Trust was designed to last 24 years after her death
    - At termination, her family would receive the remainder
    - An escape clause was given
      - The children chose to forgo the charitable lead trust and receive their inheritance right away
- These trusts are not as common nowadays
- However, we expect them to rise again

# TENNESSEE CEMETERY TRUST

- Often used to assist old churches
  - May be particularly vulnerable as society turns toward cremation
  - Considered charitable trusts
  - Tenn. Code 46-7-101
  - Not generally subject to the Rule against Perpetuities
    - Trusts generally must terminate within 360 years of creation
    - Cemetery trusts, on the other hand, can last for eternity
- Any person may make gifts to a cemetery trust
  - Tenn. Code 46-7-105

# **TENNESSEE CEMETERY TRUST** (CONTINUED)

- Trust may only be used for the perpetual care of a private cemetery
  - Tenn. Code 46-7-104
- Real property (and funds) must be irrevocably committed for cemetery purposes
  - Tenn. Code 46-7-103
- A non-profit, tax-exempt trust corporation serves as the Trustee.
  - It must have the word "cemetery" in its title

# PRIVATE FOUNDATIONS

- Non-profit legal entity set up for charitable purpose
- Generally make grants
- Set up during lifetime, often passed down to heirs after death
- Often family-run
  - Board of directors may consist of related family members
  - Source of funding is limited, not from the general public
  - Do not typically engage in fundraising

# **PRIVATE FOUNDATIONS** (CONTINUED)

- Limitations on deductibility of contributions
  - 30% deduction allowed against income
  - Foundation is permitted to make grants each year to various other charitable entities
- Tax savings
  - Income tax deduction for amount contributed
  - Capital gains tax savings for contributed an appreciated asset and not recognizing any gain
  - Estate tax saving as the value of the assets contributed are not a part of the donor's taxable estate at death
- Form 990PF filed each year

# **PRIVATE FOUNDATIONS** (CONTINUED)

- Differentiation from Public Charity
  - Public charities are directly involved in charitable operations, while private foundations make grants to third party charities engaged in charitable operations
  - Up to 60% deduction against income is allowed for a public charity contributions
  - However, 2/3 of the charity's income must come from the public
  - At least one half of the seats for the board of directors must be held by unrelated individuals
  - Files a Form 990 each year

# **PRIVATE FOUNDATIONS** (CONTINUED)

- Filing Requirements
  - Bylaws, EIN, Charter
  - Charitable solicitations filings if fundraising is conducted
  - Importantly, specific language in Bylaws & Charter regarding charitable scope and distribution of assets upon dissolution
    - Not formed for profit or gain
    - Assets may not go to the officers
    - Organized exclusively for charitable purposes

# TAX ASPECTS OF PLANNED GIVING

KEITH FULFER, CPA

# KEITH FULFER, CPA

PICKLER
ACCOUNTING ADVISORS

- Partner at Pickler Accounting Advisors
- Located in Collierville, Tennessee
- 15 years of accounting experience
- Member of the American Institute of Certified Public Accountants and the Tennessee Society of Certified Public Accountants

SECTION 3

# THE TAX IMPLICATIONS

## UNDERSTANDING INCOME & CAPTIAL GAIN

# A Super Simple Introduction to

Income, Capital Gain, Estate, Gift, and Generation Skipping

# Taxes

# TOPICS FOR DISCUSSION

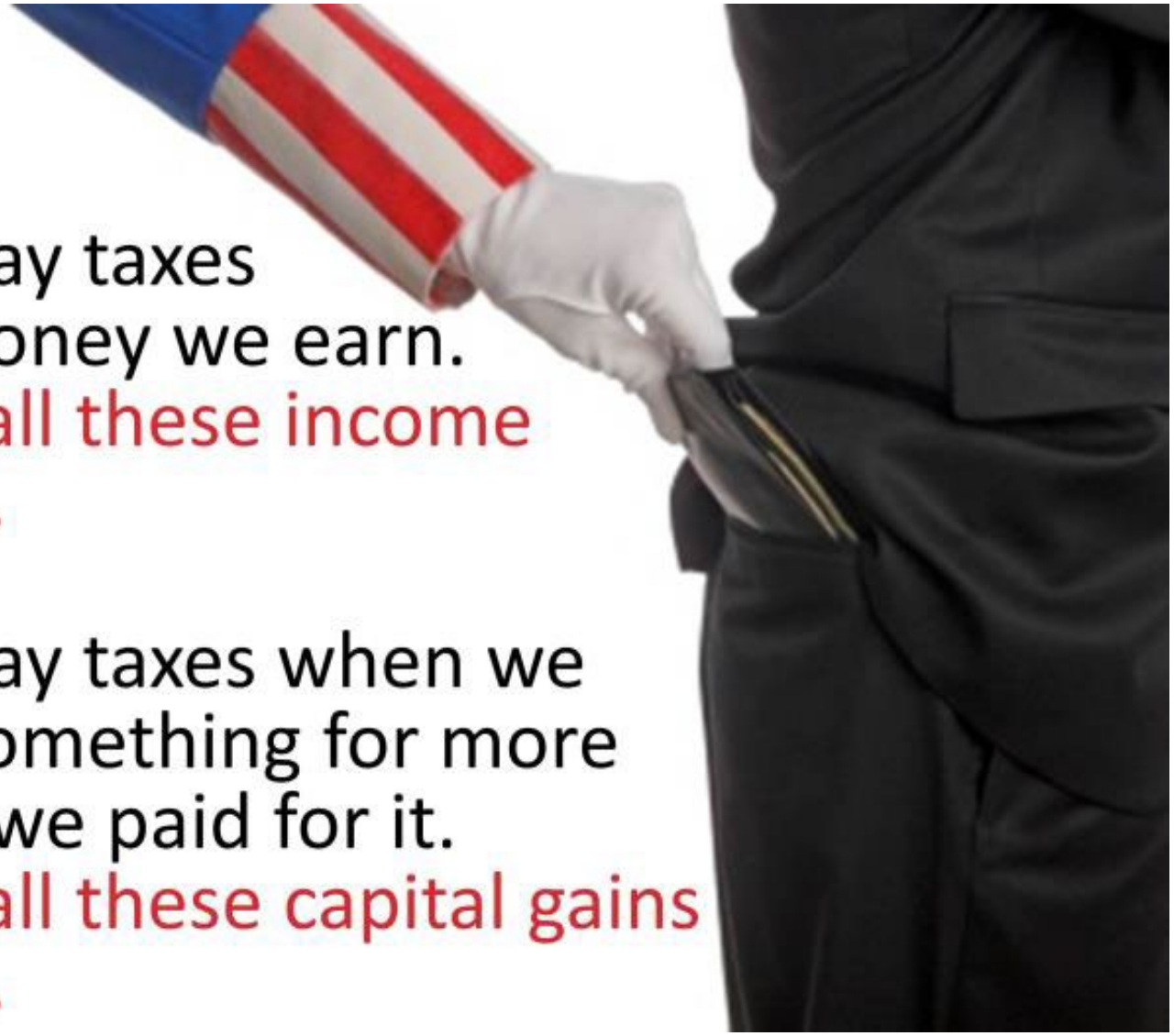
- Timing of the gift
- Documentation: KNOW THE RULES, particularly the valuation rules.
- Income limitations and types of Assets (Cash, property, investments, etc.), carryovers
- Bargain Sale gifts
- Charitable gift annuities(secure income)
- Gifts of partial interests
- Remainder Interests
- Charitable Remainder Trusts
    - CRT
    - CRAT (similar to the Charitable gift annuities, except secured by the investments), fixed payment
    - CRUT fixed percentage for the payment
    - Be careful of the reasons to have the trust disqualified
    - Potential complicated tax treatment of annuity payments
- Charitable Lead Trusts
- Private Foundations and Donor Advised Funds

Yes, it can get complicated.

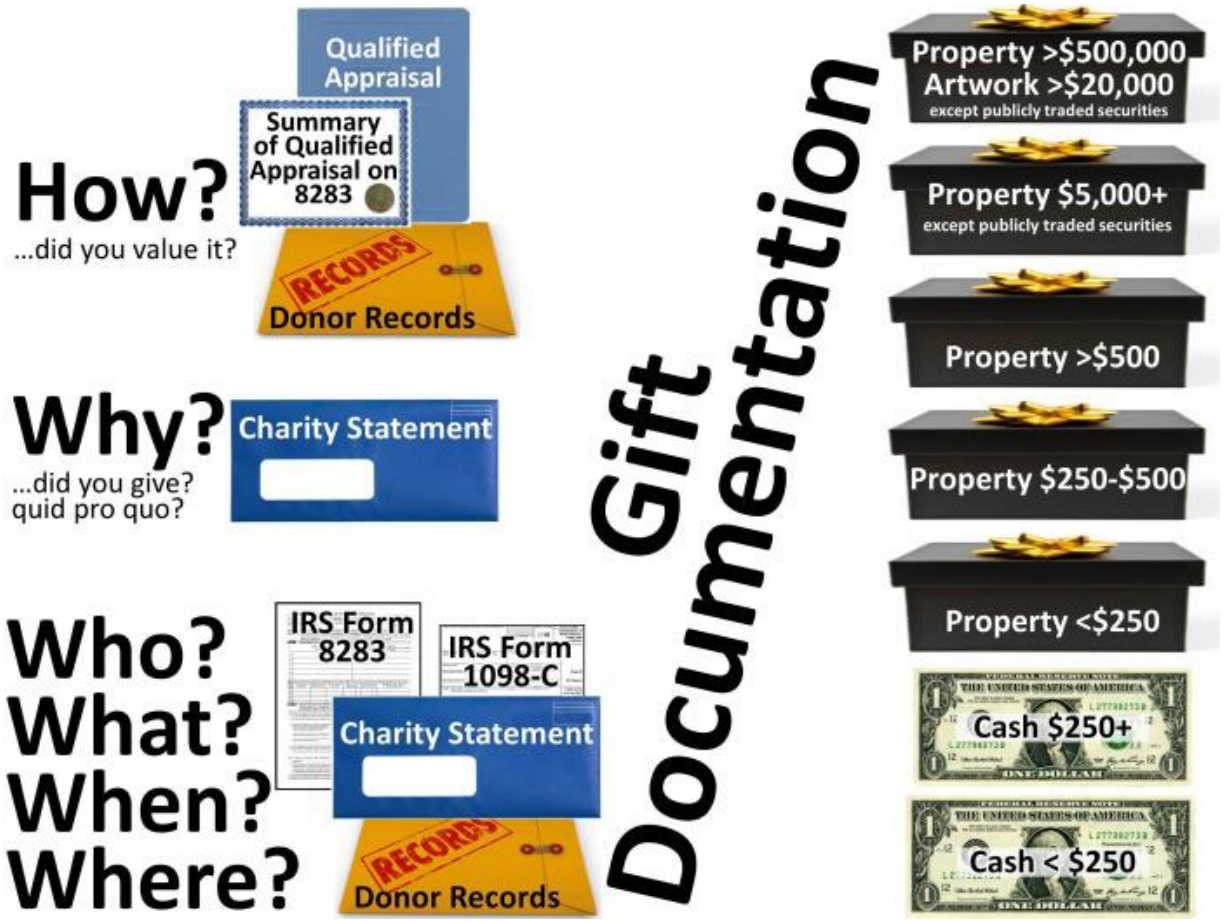
But, it still only does two things.

We pay taxes
on money we earn.
We call these income
taxes.

We pay taxes when we
sell something for more
than we paid for it.
We call these capital gains
taxes.



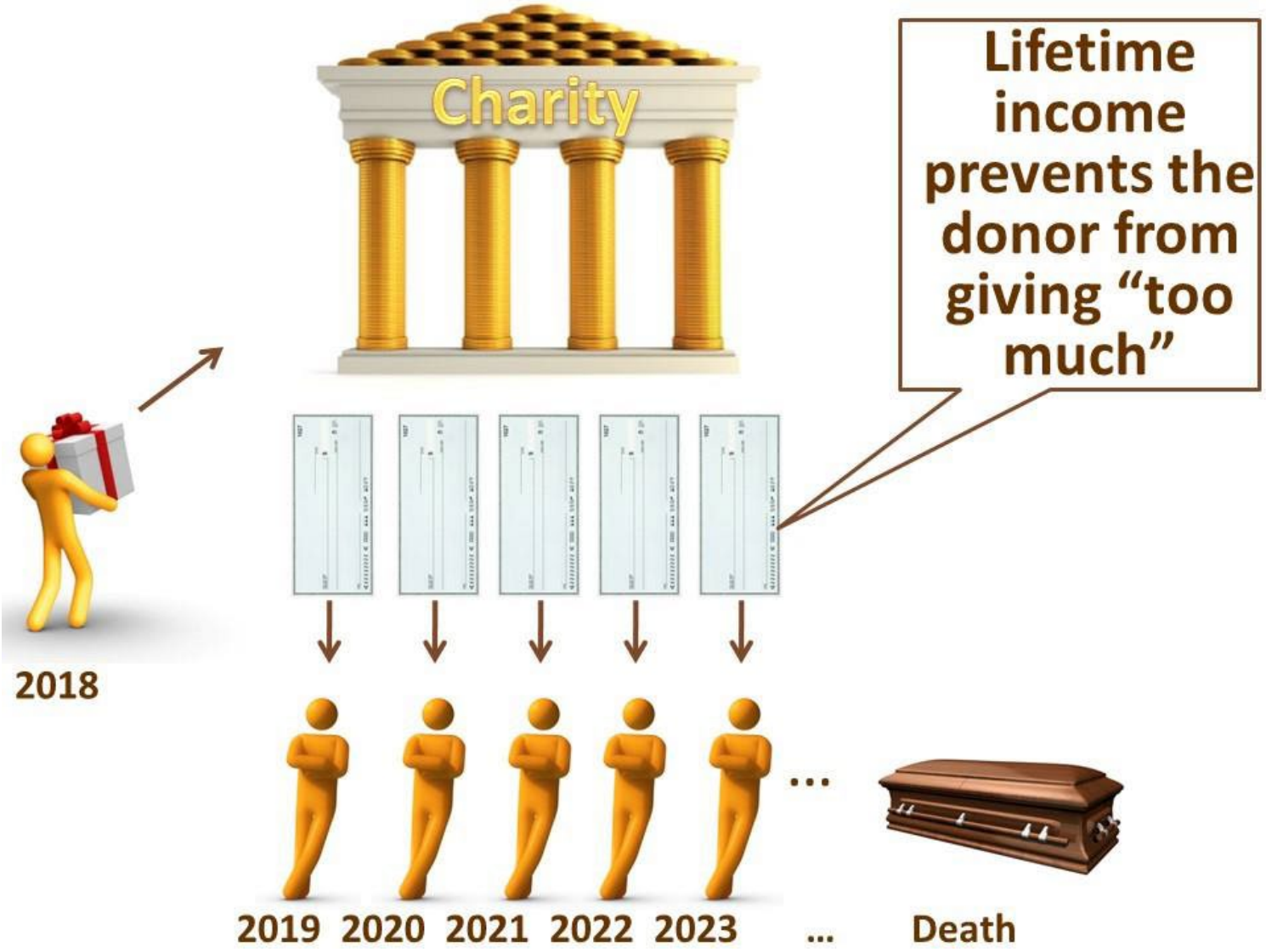
# Elements and Timing of a Charitable Gift


Gift Documentation
How?
...did you value it?
Qualified Appraisal
Summary of Qualified Appraisal on 8283
RECORDS
Donor Records
Why?
...did you give?
quid pro quo?
Charity Statement
Who?
What?
When?
Where?
IRS Form 8283
IRS Form 1098-C
Charity Statement
RECORDS
Donor Records
Property >$500,000
Artwork >$20,000
except publicly traded securities
Property $5,000+
except publicly traded securities
Property >$500
Property $250-$500
Property <$250
Cash $250+
Cash < $250

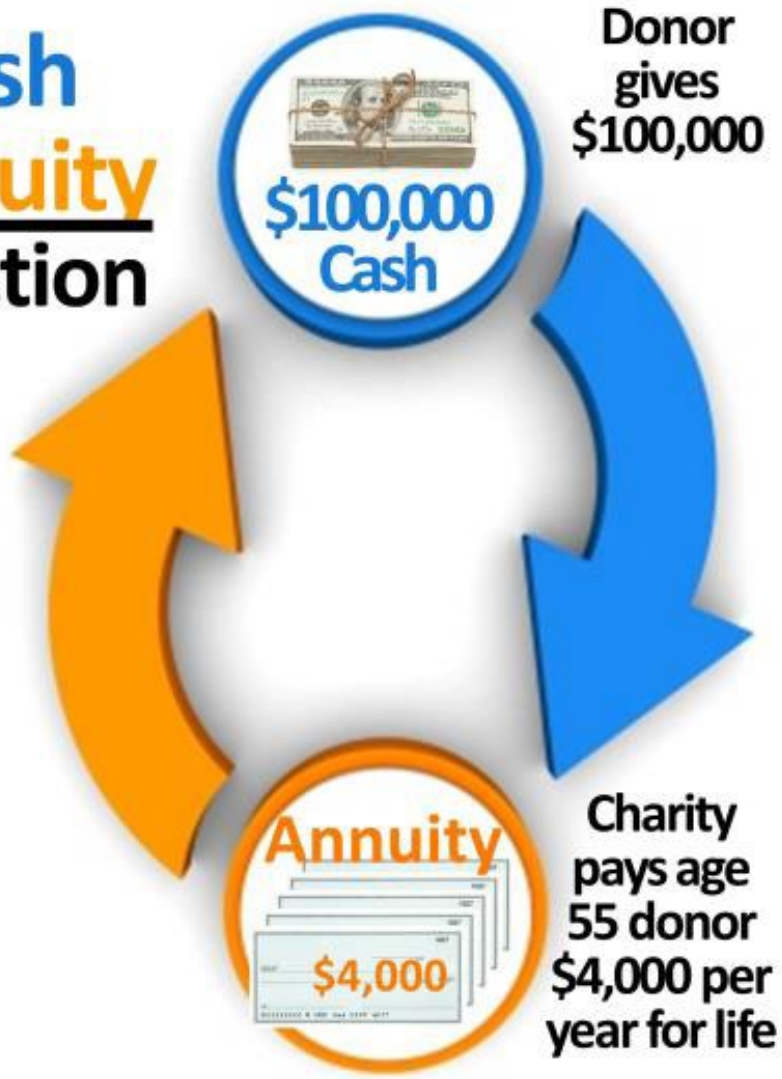
**Charitable deductions are limited to 20%, 30%, 50% or 60% of income depending on the gift and recipient**

Bargain sale:
The transfer of an asset to a charity for less than fair market value in order to make a gift

# Charitable Gift Annuities


Charity
Lifetime income prevents the donor from giving "too much"
2018
2019
2020
2021
2022
2023
...
...
Death

$100,000 Cash
– Value of Annuity
Charitable Deduction



Find the §7520 rate

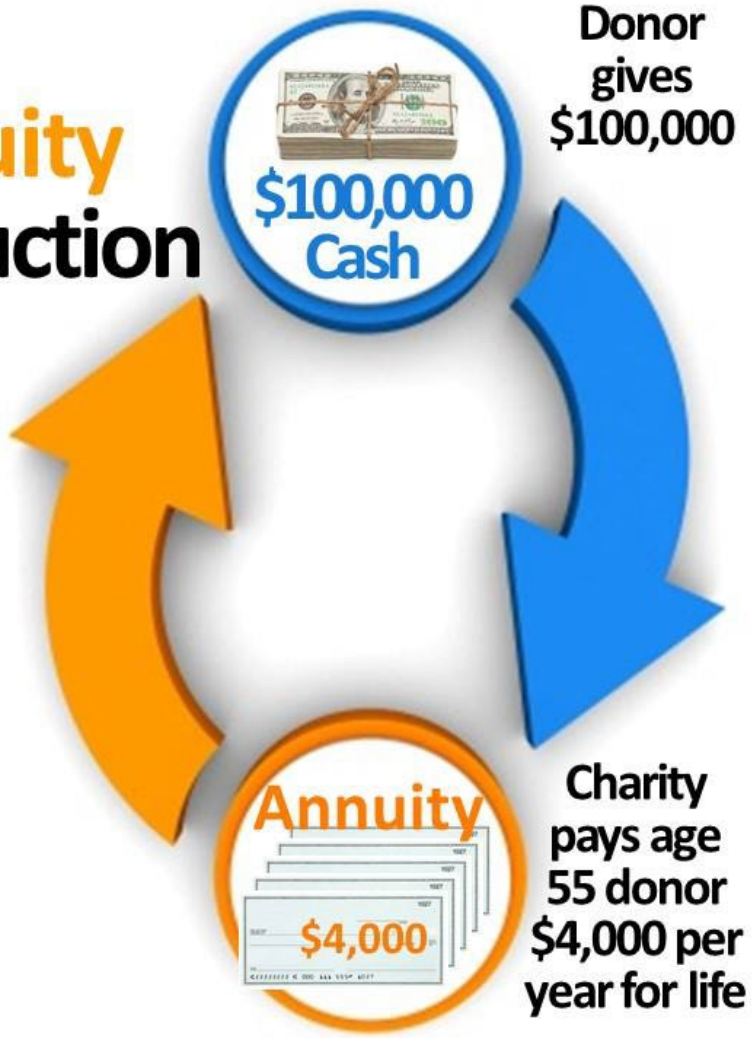
https://www.irs.gov/businesses/small-businesses-self-employed/section-7520-interest-rates

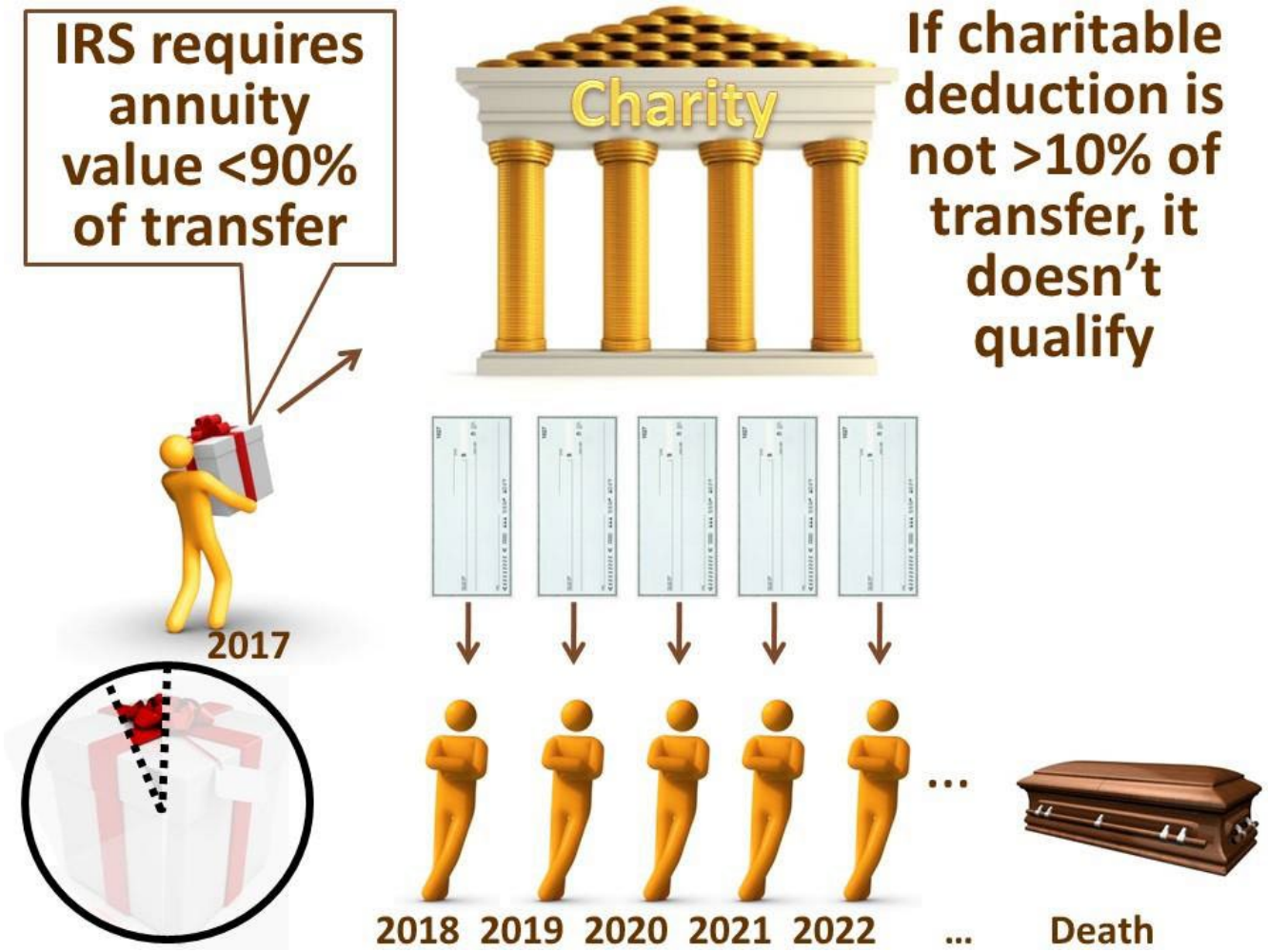
Multiply annual payment by annuity factor in IRS Pub. 1457

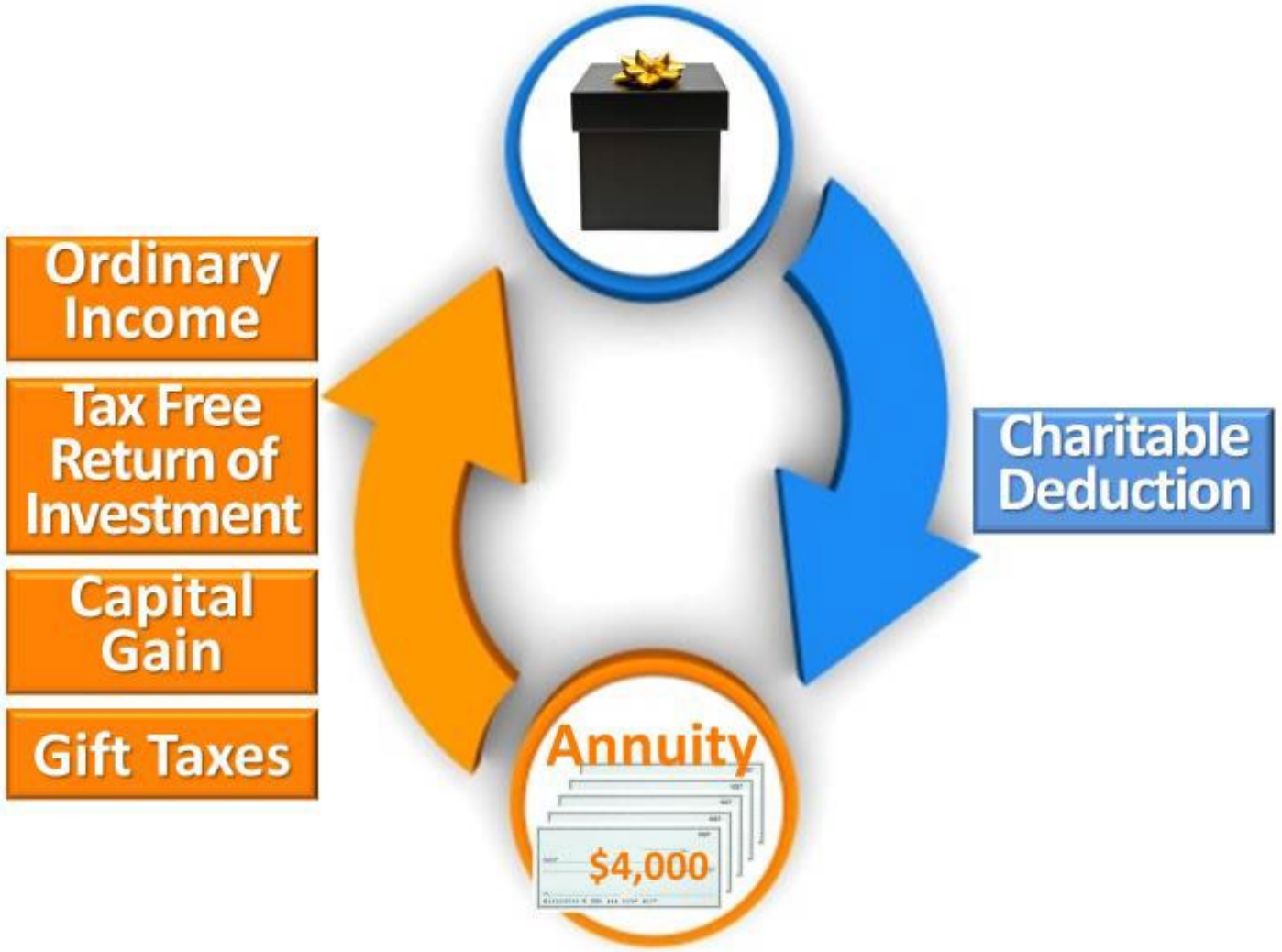
https://www.irs.gov/retirement-plans/actuarial-tables

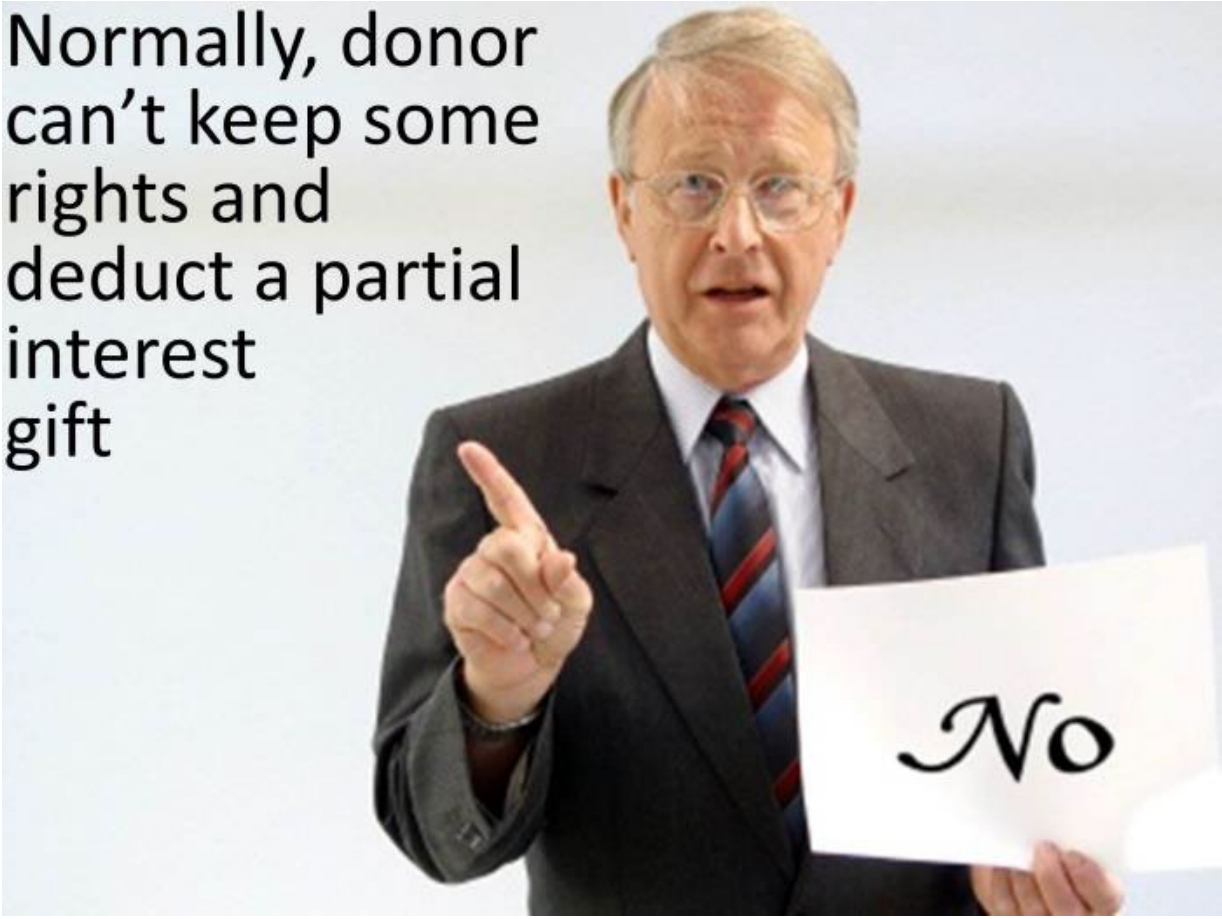
**Value of annuity**

$100,000 Cash
– $72,797 Annuity
$27,203 Deduction




IRS requires annuity value <90% of transfer
Charity
If charitable deduction is not >10% of transfer, it doesn't qualify
2017
2018
2019
2020
2021
2022
...
...
Death


Ordinary Income
Tax Free Return of Investment
Capital Gain
Gift Taxes
Charitable Deduction
Annuity
$4,000


Normally, donor can’t keep some rights and deduct a partial interest gift
No

A remainder interest gives the right to own the property after a set time or after the death of a person

## How do you calculate the deduction for a remainder interest in farmland?

1. Find the §7520 interest rate

**https://www.irs.gov/businesses/small-businesses-self-employed/section-7520-interest-rates**

2. Multiply value of land by remainder percentage for that interest rate (from IRS Pub. 1457 for one or two lives or specific term)

**https://www.irs.gov/retirement-plans/actuarial-tables**

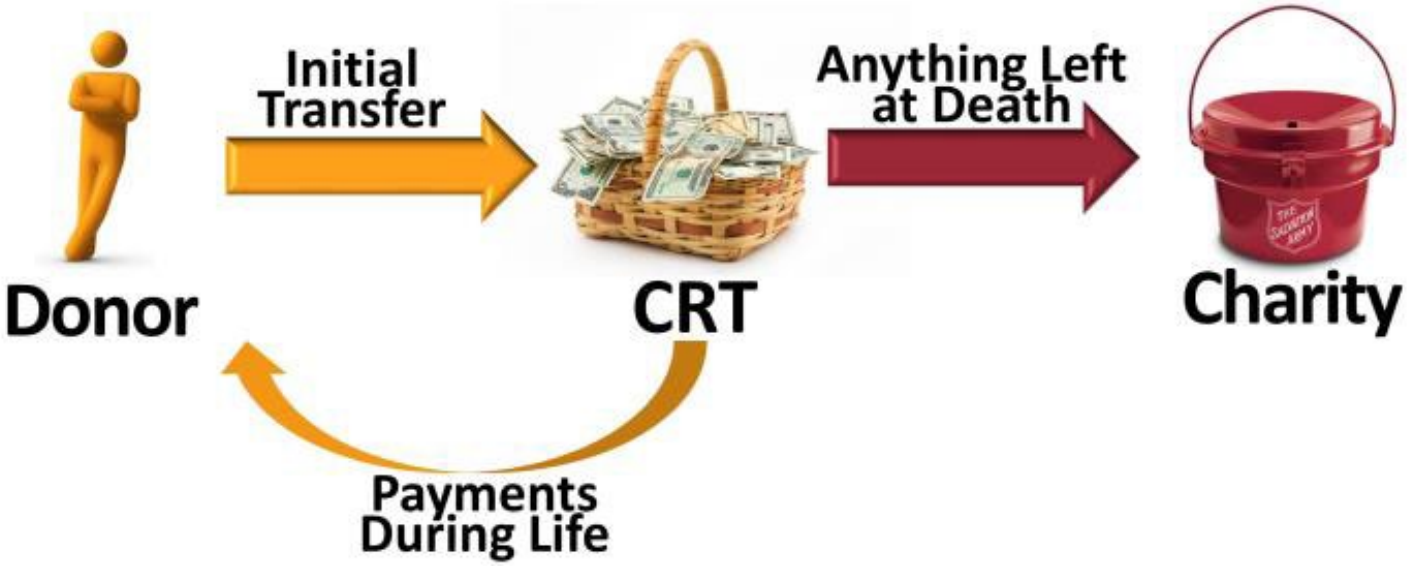
# Formula required to calculate factor for the depreciable part for two lives

$$\left(1+\frac{i}{2}\right)\sum_{t=0}^{n-1} V^{(t+1)}\left[\left(1-\frac{l_{x+t+1}}{l_x}\right)\left(1-\frac{l_{y+t+1}}{l_y}\right)-\left(1-\frac{l_{x+t}}{l_x}\right)\left(1-\frac{l_{y+t}}{l_y}\right)\right]\left(1-\frac{1}{2n}-\frac{t}{n}\right)$$

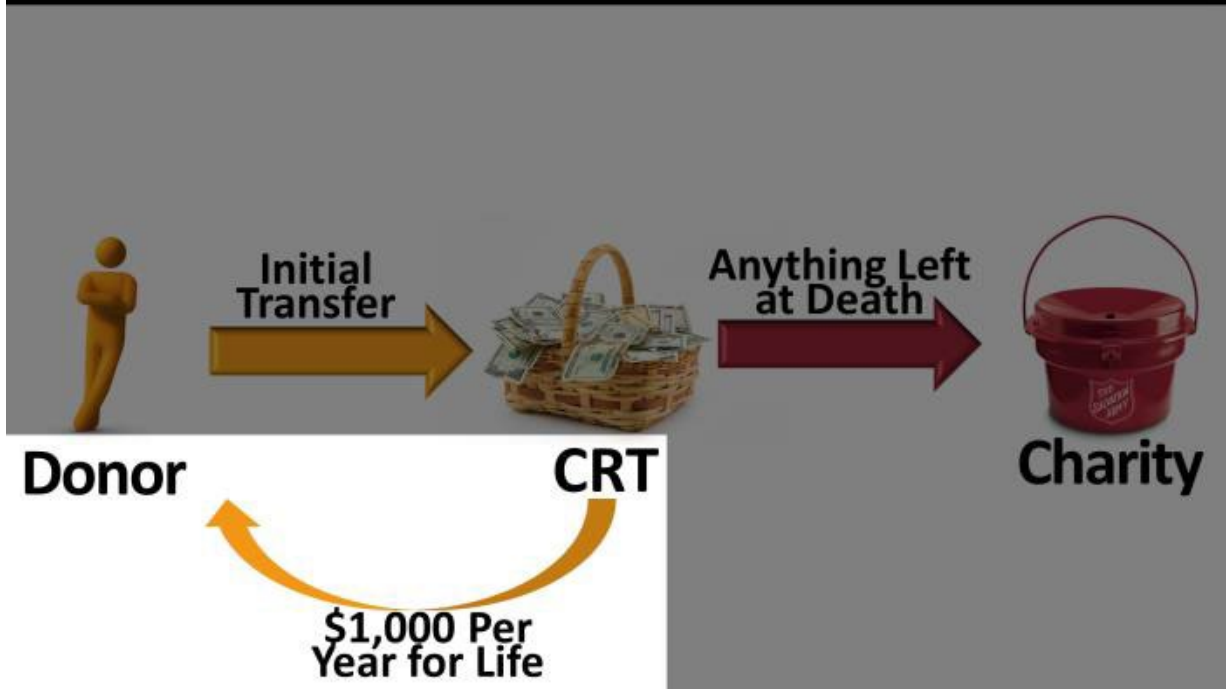
n = the building's estimated useful life, e.g. 45
i = the 7520 interest rate, e.g. 0.02
V = 1/(1+ the 7520 interest rate), e.g. 1/1.02
x & y = the ages of the life tenants, e.g., 59 & 62
lx & ly = the number of persons living at ages x and y in Table 2000CM (http://www.irs.gov/Retirement-Plans/Actuarial-Tables)

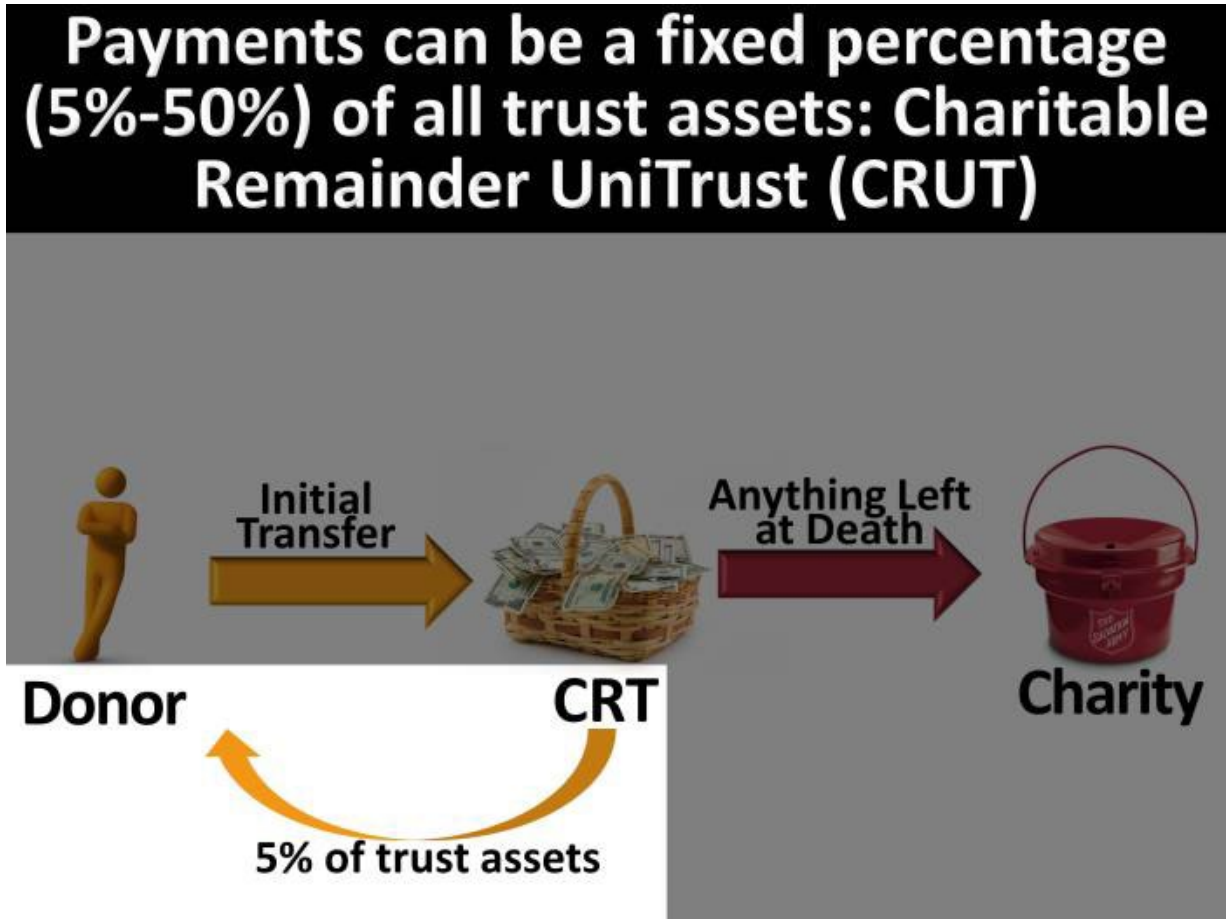
Or, for an actual contribution, you can ask the IRS to calculate this for you

# Charitable Remainder Trusts

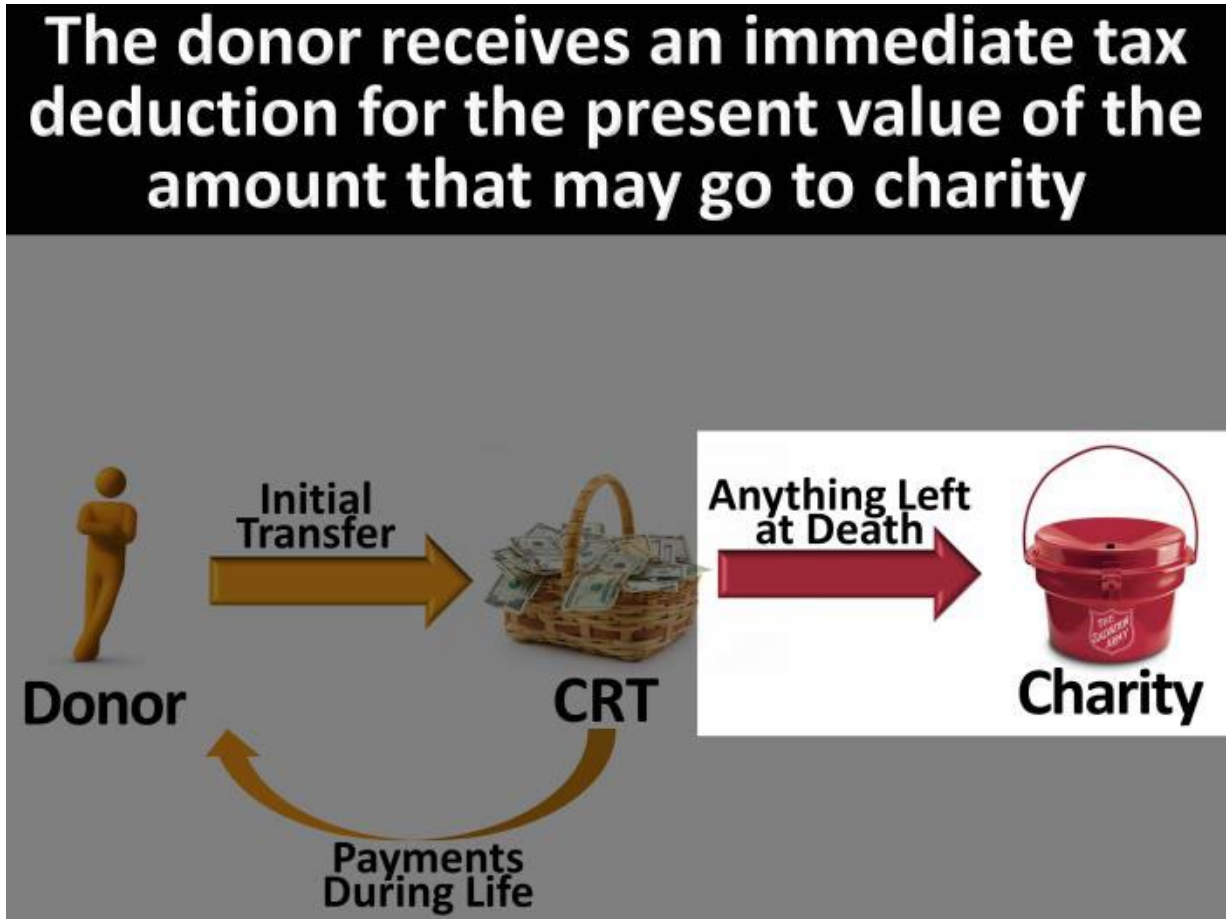


# Payments can be a fixed dollar amount (min 5% of initial value): Charitable Remainder Annuity Trust (CRAT)

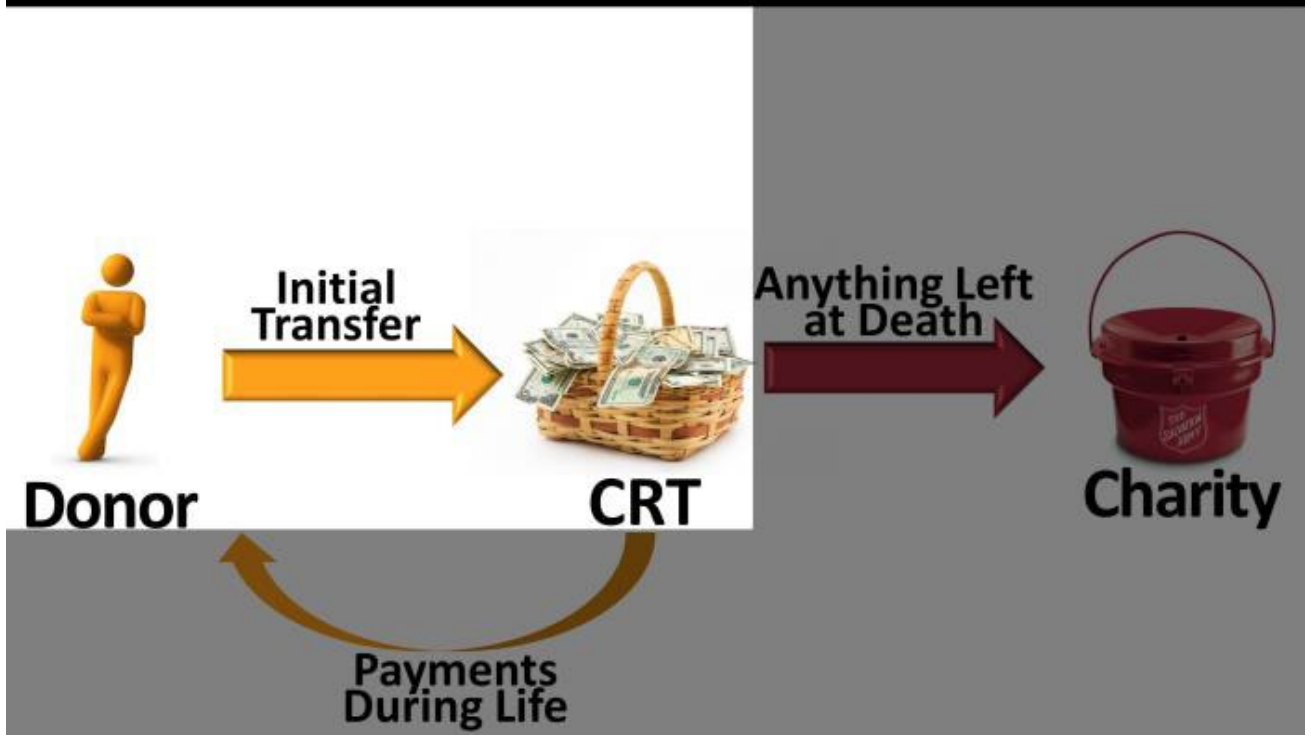



Payments can be a fixed percentage (5%-50%) of all trust assets: Charitable Remainder UniTrust (CRUT)
Initial Transfer
Anything Left at Death
Donor
CRT
Charity
5% of trust assets

The donor creates the rules in a Charitable Remainder Trust, but once created it is irrevocable


The donor receives an immediate tax deduction for the present value of the amount that may go to charity
Initial Transfer
Anything Left at Death
Donor
CRT
Charity
Payments During Life

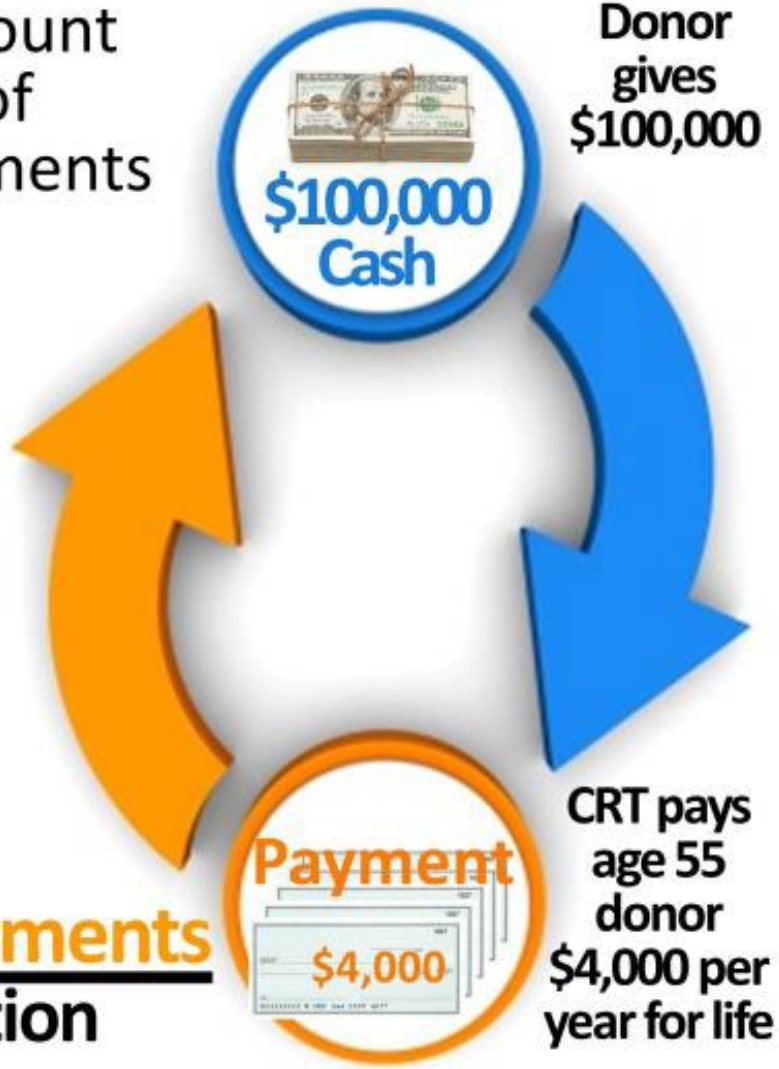
# Why is it a big deal that the transfer and sale of appreciated property occurs without capital gains tax?



# Tax rules for CRTs

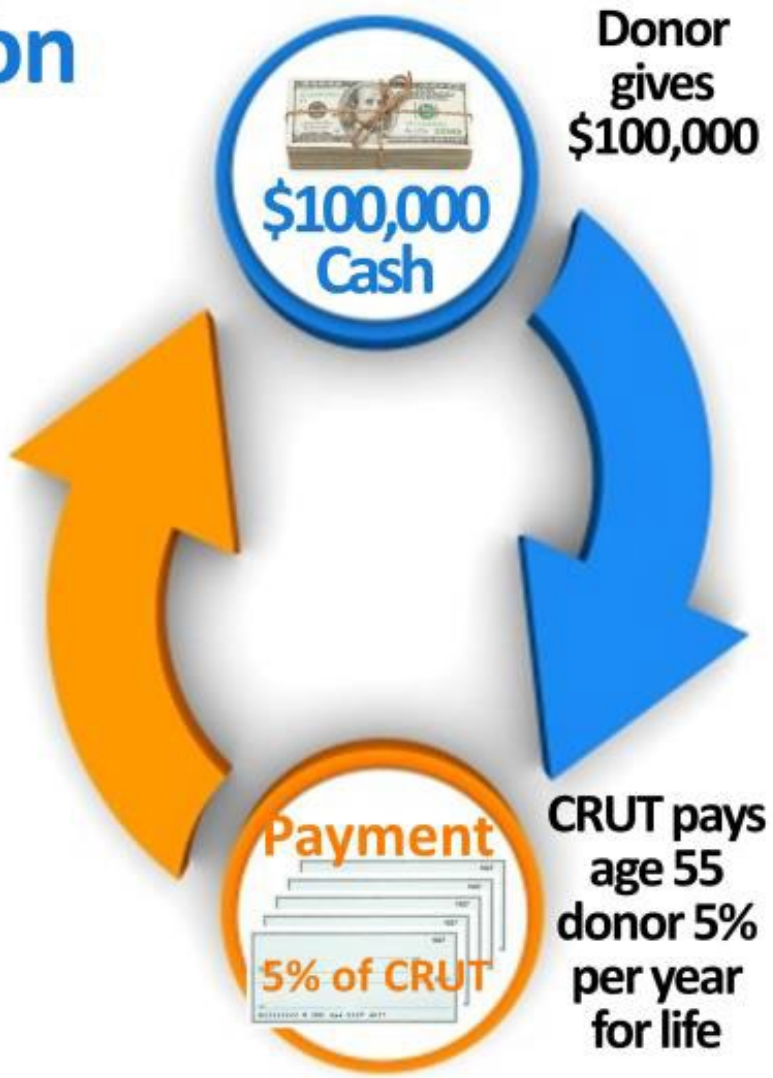
**Charitable deduction is the value of what you give less the value of what you get back (CRT payments)**

Tax deduction is amount gifted less value of annuity/unitrust payments

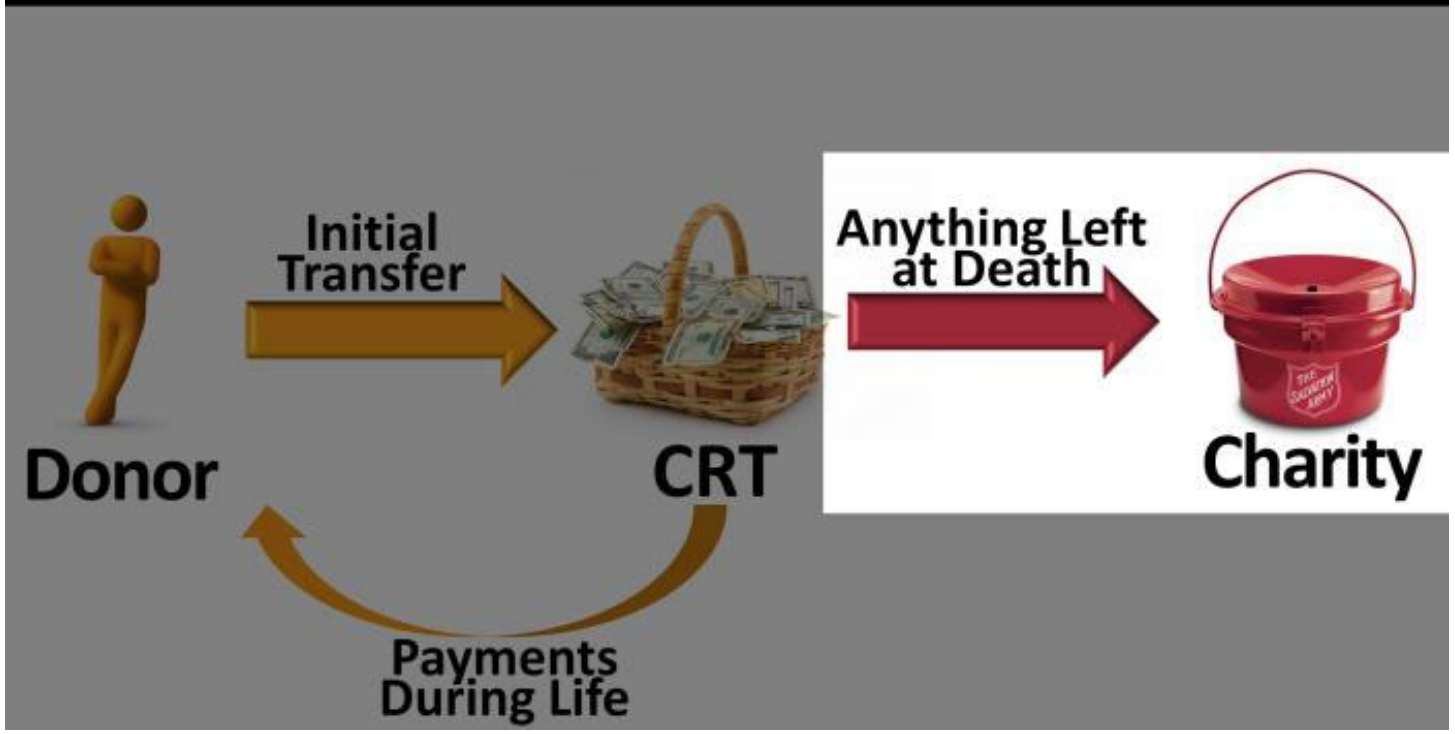



$100,000 Cash
– Value of CRT payments
Charitable Deduction

# CRUT calculation process



# The present value of the projected amount going to charity (i.e., the tax deduction) must be at least 10% of the transfer



# The IRS tax deduction is actuarially too large because CRT donors live longer

Annuity purchasers live longer (i.e., sick people don't buy lifetime annuities)

Wealthy people live longer (CRT donors are very wealthy)

Charitable bequest donors live longer

See: James, R.N., (2013) American Charitable bequest demographics.

Rule: 10% of present value minimum to charity

Reality: Share of CRT assets to charity, <2%

Split interests trusts, filing year 2011, IRS Statistics of Income

# CRAT disqualified if >5% chance of exhaustion due to annuitant longevity

## STEP 1: Using §7520 rate, at what age will the CRAT exhaust?

Using a financial calculator solve for n (number of time periods) after entering present value (initial CRAT assets), rate (§7520 rate), payments, and setting future value to 0. The underlying formula is

$$n_{PVA} = ln\left[\left(1 - \frac{PV(r)}{P}\right)^{-1}\right] \div ln(1+r)$$

$n = number\ of\ periods$
$PV = Present\ Value\ (of\ Annuity)$
$r = rate$
$P = Payment/Cash\ Flows$

## STEP 2. Is there >5% chance the donor will live that long?

(lx@age-of-exhaustion / lx@current-age, using Table 2000CM at www.irs.gov/Retirement-Plans/Actuarial-Tables )

# Alternative CRAT Exhaustion Rule

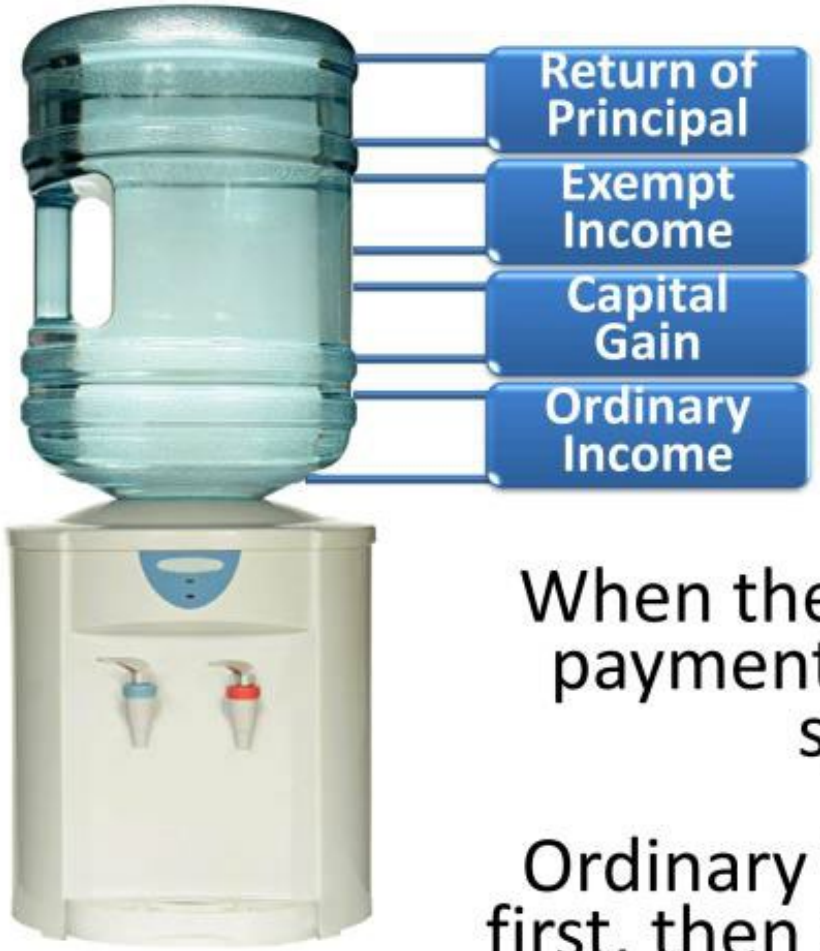
**CRAT with >5% chance of exhaustion is OK if it must terminate and pay all to charity if assets fall to 10% of the present value of the initial contribution**

Rev. Proc. 2016-42

# So what happens if it doesn’t qualify as a CRT?

# No tax benefits

Retained interest gifts are not otherwise deductible. Trust isn’t charitable and pays taxes on any gain or income.

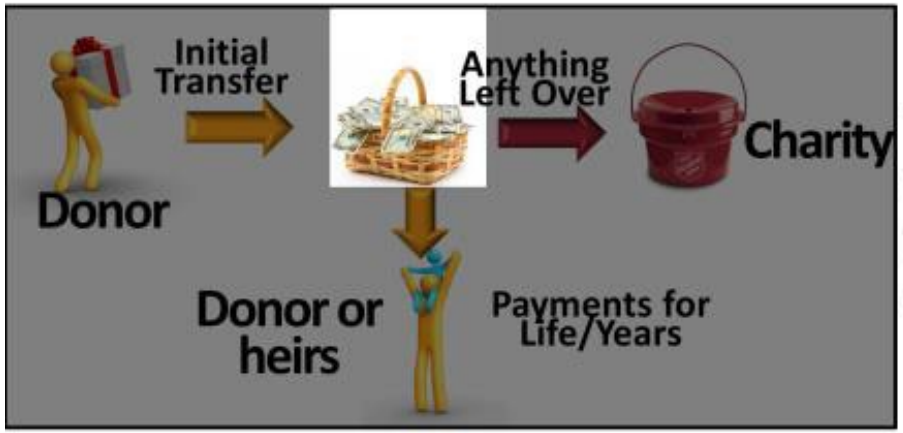



When the trust makes a payment, it opens the spigot.

Ordinary income is paid first, then capital gain and so forth.

# Charitable Lead Trusts

# Differences in CLTs and CRTs



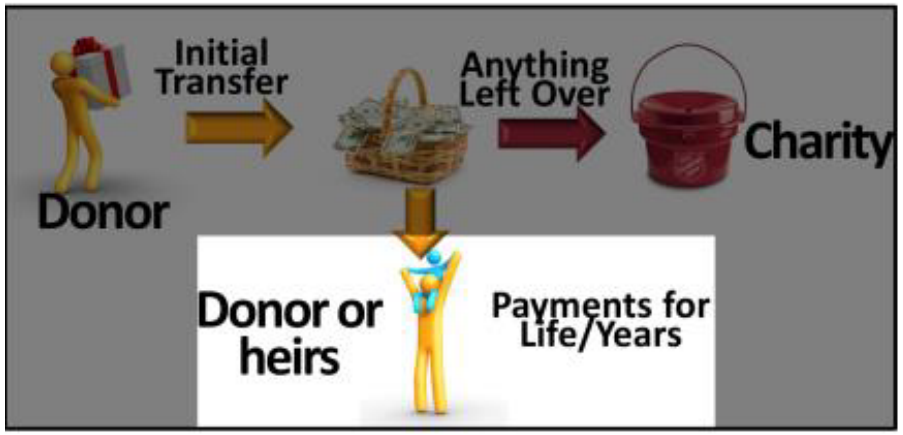

## CRT

The trust is tax exempt, so there are no immediate taxes on trust earnings


## CLT

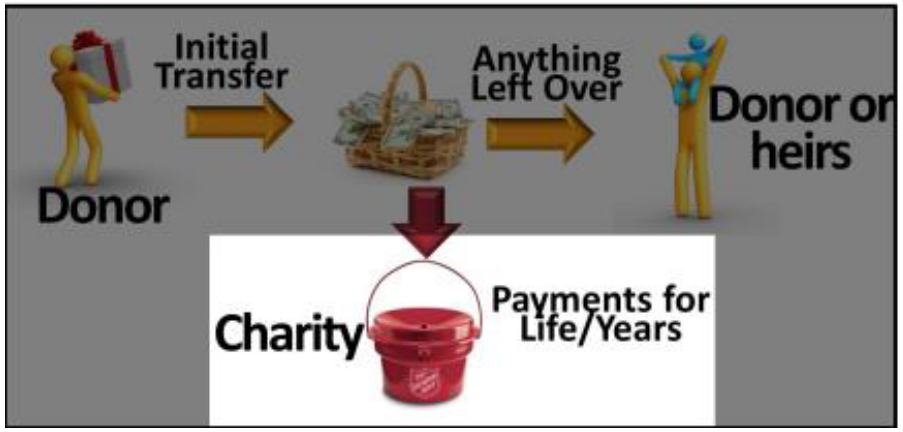
The trust is not tax exempt, so the trust (non-grantor CLT) or donor (grantor CLT) must pay taxes on trust earnings

# Differences in CLTs and CRTs




## CRT

Payments may be for life or up to 20 years, and must be 5% to 50% of initial (CRAT) or ongoing (CRUT) trust assets




## CLT

Payments may be for life or <u>any</u> time period and can be for <u>any</u> fixed dollar (CLAT) or ongoing % (CLUT) amount

A CLT can “zero out” gift and estate taxes by setting the non-charitable value at zero

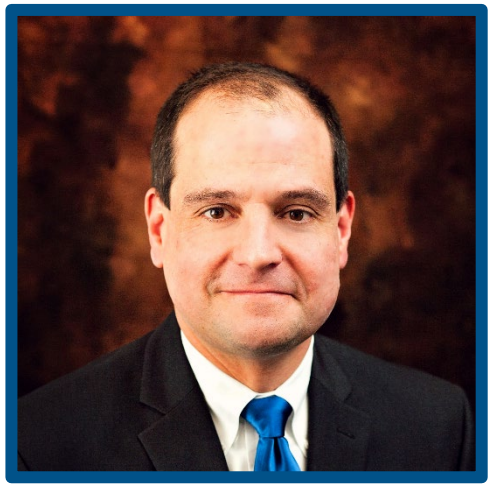
# Private Foundations

# & Donor Advised Funds

# ASSET PROTECTION

CORT WINSETT, ESQ

# CORT WINSETT, ESQ



- Sr. Director of Operations at Pickler Wealth Advisors and In-House Counsel for The Pickler Law Firm
- Has practiced law for 12 years
- Experience in the areas of Estate Planning, Business Law, Probate, Elder Law, and Family Law
- Ensures that the firms maintain a high level of ethical and disciplined service to clients

# ASSET PROTECTION

## BRINGING IT ALL TOGETHER

# WHAT IS ASSET PROTECTION?

- Asset protection is the concept of and strategies for guarding one's wealth

# THE DEFINITION OF "WEALTH"

- What do you include in your definition of "Wealth?" What *can* you protect & what *should* you protect?
  - Assets are property a person or organization owns
  - Assets can be tangible or intangible
    - Stocks, bonds, hard assets, and cash
      - Personal residence, investment real estate, bank accounts, marketable securities, automobiles, bikes, boats, planes, cars, Spanish doubloons, businesses, shoes, etc.

# METHODS OF ASSET PROTECTION

- Risk management begins with determining what a client has and what the best way to protect it is
  - It's important for you to keep track of your assets
    - An appraiser can determine the value
  - First of all, make sure your client has sufficient insurance coverage
    - Insurance allows for the replacement of assets lost to a peril or criminal activity
    - Your client will accept a certain level of risk of loss and offset that by paying for insurance
    - Protects you against liability if you're in an accident that is your fault (Liability)
    - Someone gets hurt at your house (Homeowners)
    - Your car is totaled (Comprehensive)
    - Your apartment or get burglarized (Renter's)
    - Malpractice, Errors, & Omissions
    - Umbrella Policies (get-out-of-jail-free card)

# METHODS OF ASSET PROTECTION (CONT.)

- Individuals and business entities use asset protection techniques to limit creditors' access to certain valuable assets
  - Helps insulate assets in a legal manner without engaging in illegal practices
  - Trusts
    - Tennessee Investment Services Act of 2007 TCA §§ 35-16-101 – 112
      - "Tennessee Asset Protection Trust"
    - Tenants by the Entirety Trust TCA § 35-15-510
    - Community Property Trust TCA §§ 35-17-101 – 108
    - Charitable Remainder Trust
  - Other financial vehicles
    - Certain Annuities & Retirement accounts offer creditor protection
    - Charitable Gift Annuities
  - Corporations and LLCs

# WHAT PLACES A CLIENT'S ASSETS AT RISK?

- Charitable planning cannot just consider gifts a client wants to make
- The Tax Man
  - Jacqueline Kennedy Onassis and the best laid plans of mice and men
- Asset Protection
  - Creditors
    - Bankruptcy
  - Predators
    - Elder Abuse
    - Identity theft
  - Lawsuits or judgements
- Divorce and remarriage
  - Step families
- Health Emergency
- Disability
  - Planning for disabilities

# THE POWER OF ATTORNEY

- Revised Uniform Fiduciary Access to Digital Assets Act
  - TCA §§ 35-8-101 – 118

# DEVIL IN THE DETAILS

- Make sure your clients have designated beneficiaries
- Risk Assessment
  - Look at your client's particular situation
  - What are your client's risks

# ACCESS TO THIS PRESENTATION

- This presentation is available on our website at www.picklercompanies.com/planned-giving
- *The recording of today's presentation will be available in the coming days on the website mentioned above*

# Q&A

## QUESTION AND ANSWER SESSION

Submit questions via Zoom or email Cameron at cspann@picklercompanies.com

PICKLER COMPANIES

# THANK YOU!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