

CUMMINGS & LOCKWOOD LLC
ATTORNEYS AT LAW

A Practical Guide to Philanthropic Giving

*“Philanthropy, charity, giving voluntarily and freely — call it what you like,
but it is truly a jewel of an American tradition.”*

~

John F. Kennedy

ABOUT CUMMINGS & LOCKWOOD LLC

Founded in 1909, Cummings & Lockwood provides sophisticated legal counsel to individuals, families, family offices, closely held businesses, other commercial enterprises and charitable entities. Through offices in Stamford, Greenwich and West Hartford, Connecticut, and Naples, Bonita Springs and Palm Beach Gardens, Florida, our attorneys offer clients a broad range of legal services, including trusts and estates, corporate and finance, litigation and arbitration, and commercial and residential real estate. For more information about Cummings & Lockwood, please visit our website at www.cl-law.com.

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INTRODUCTION

The purpose of this guide is to assist you in understanding the philanthropic landscape, the tax benefits of charitable giving and the types of assets that can be used for different philanthropic purposes. It also is designed to familiarize you with the various charitable giving vehicles that potentially can be created as part of your overall estate plan. We describe each vehicle and summarize the advantages, disadvantages and other considerations of each option to help you determine which one may be right for you. Ultimately, the one you choose will be based on your own specific goals and strategies. Finally, we present some key questions for you to consider that will help you discover, define and realize your unique philanthropic mission.

PHILANTHROPIC GIVING IN THE UNITED STATES

Historically, Americans have been generous when it comes to philanthropic giving. In fact, according to Giving USA Foundation, charitable donations in the United States have reached nearly \$450 billion annually, the highest dollar total on record since the organization first published its yearly report in 1956. The largest source of charitable giving typically comes from individuals, followed by foundations, bequests and corporations.

Individual and Family Philanthropy

The overwhelming majority of American high net worth households make charitable donations, according to a recent U.S. Trust Study of High Net Worth Philanthropy.

Approximately 90% of this affluent group give to charity on an annual basis, compared to 56% of the general U.S. population.

Organizations Supported By Affluent Donors

Based on the Urban Institute's National Center for Charitable Statistics, there are more than 1.5 million charitable organizations in the United States.

High net worth donors give to an average of seven different nonprofit organizations, according to the U.S. Trust Study. These donations support a wide range of charitable causes with basic needs organizations receiving support from the largest percentage (54%) of high net worth households.

Additional causes supported by affluent donors include religion (49%), health care or medical research (36%), combined charities (31%) and youth or family services (29%). Thirty-six percent of high net worth households give to educational causes, including 22% to higher education and 24% to K–12 education.

Reasons for Giving

According to the U.S. Trust Survey, high net worth donors make charitable donations for a variety of personal and altruistic reasons. In citing the top four reasons for their donations, 54% of affluent households said they gave because of their belief in the mission of the organization, 42% gave because of their belief that their gift can make a difference, 34% gave to support the same cause or organization year after year, and 32% gave to experience personal satisfaction, enjoyment or fulfillment.

TAX ADVANTAGES OF PHILANTHROPIC GIVING

Charitable giving can be an important component of an estate or income tax plan. While receiving tax benefits is generally not a prime motivation for giving among affluent donors, many donors are motivated by tax savings that can be associated with a charitable gift.

The Internal Revenue Code provides tax incentives to encourage charitable giving. Generally, the tax incentives are more favorable if a charitable gift is made (i) during the donor's lifetime (rather than at death), (ii) to a public charity (rather than a private foundation), and (iii) with highly appreciated property held long-term (rather than cash).

Following are some of the key tax advantages associated with philanthropic giving:

- **Income Tax**—In order for a donor to be entitled to an income tax charitable deduction, the gift must be made to a qualified charity (i.e. a public charity or a private foundation) and its value cannot exceed a specific percentage of the donor's adjusted gross income ("AGI") in the year of the gift, with any unused deduction typically allowed to be carried forward for five (5) years. Contributions to public charities are typically given the most favorable tax treatment.
- **Estate Tax**—Generally, contributions to organizations that qualify for the income tax deduction also qualify for the federal estate tax charitable deduction. For estate tax purposes there are no limitations on the amount of the deduction for qualifying contributions.
- **Gift Tax**—Similarly, contributions to organizations that qualify for the income tax deduction also qualify for the federal gift tax charitable deduction. For gift tax purposes there are no limitations on the amount of the deduction for qualifying contributions.

TYPES OF PHILANTHROPIC GIVING AND ASSOCIATED TAX BENEFITS

As reflected in the following chart, there are many different kinds of gifts or alternative assets to consider which may enable you to contribute to a charitable organization while also realizing greater tax benefits for yourself or your beneficiaries.

*"Think of giving not
only as a duty, but
as a privilege."*

~

John D. Rockefeller

Type of Gift	How to Give	Tax Benefits
Bequests	Include a written statement in your Will or Living Trust, directing specific assets or a percentage of your estate to a charitable organization outright or for a restricted purpose.	The donation qualifies for a federal estate tax deduction.
Pledges & Deferred Gifts	Make a promised gift to a charitable organization to be paid at a future date.	If you satisfy the pledge during your lifetime, you will receive an income tax deduction. If satisfied at death, then an estate tax deduction.
Current Gift of Cash	Make a cash gift to a charitable organization by simply writing a check.	Your income tax deduction is equal to the amount of cash you donated, minus the value of any goods or services you received in return, subject to adjusted gross income percentage limitations.
Current Gift of Tangible Assets	Transfer tangible assets, such as artwork, jewelry, automobiles, etc., to a charity.	This gift may entitle you to an income tax deduction equal to the value of the assets you have donated. However, the rules that apply to gifts of tangible assets are tricky, so you should consult your adviser.
Current Gift of Publicly-Traded Securities	Transfer appreciated stock shares to a charitable organization.	This type of gift is typically subject to a full fair market value income tax deduction if held for more than a year prior to donating, subject to limitations on income.
Current Gift of Complex, Non-Publicly Traded Capital Assets	Transfer private or restricted company stock or shares of a privately owned business or real estate to a charity.	You may be eligible for an income tax deduction, subject to various limitations.
Designated Charity as Beneficiary of Retirement Plans & IRAs	Designate a charitable organization as a partial or entire beneficiary of retirement plan assets, which are payable upon death.	The donation qualifies for a federal estate tax deduction.
Current Charitable IRA Rollover	If you are 70 ½ and older, you may transfer up to \$100,000 annually from your IRA directly to a qualified public charity.	This type of charitable distribution is known as a Qualified Charitable Distribution, or a QCD, and it is not taxable to you nor is it added to your adjusted gross income, which means that a QCD will not trigger a Medicare premium surcharge or otherwise affect your adjusted gross income for income tax purposes.
Life Insurance	Name a charitable organization as a partial or entire beneficiary of proceeds from a life insurance policy, which are payable upon death.	The donation qualifies for a federal estate tax deduction.
Charitable Gift Annuity	Initiate a contract, transferring cash or property to a charitable organization. In return, that organization will pay a fixed amount each year for the lifetime of one or two individuals. These transfers are irrevocable.	Your gift supports a charity while also guaranteeing you a stream of income for the rest of your life or a loved one's life. Gift annuities allow an immediate income tax deduction, subject to adjusted gross income percentage limitations.
Charitable Lead Trust	Fund a trust that distributes an annuity or unitrust amount to a named charity for life or a term of years, with any remaining trust assets passing to designated non-charitable beneficiaries upon termination of the trust.	This trust can be structured to produce an income tax deduction or can be a separate taxpayer, reporting and paying tax on its own income and gains, with deduction for amounts paid to charity out of its income, and generally, its charitable deduction is not subject to the percentage limitation rules.
Charitable Remainder Trust	Fund a tax-exempt trust that distributes an annuity or unitrust amount to one or more designated non-charitable beneficiaries for life or a term of years, with the remaining trust assets passing to charity upon termination of the trust.	This trust allows for an immediate income tax deduction for a portion of the assets and up-front capital gains tax deferral.
Donor-Advised Fund	Irrevocably donate assets to a donor-advised fund and retain the ability to recommend distributions from the fund.	You will be eligible for an immediate income tax deduction, subject to adjusted gross income percentage and other limitations.
Private Foundation	Can be structured as a trust or corporation and provides flexibility in the selection of charitable recipients year to year and control over the entity.	You will be eligible for an immediate income tax deduction, subject to adjusted gross income percentage and other limitations.

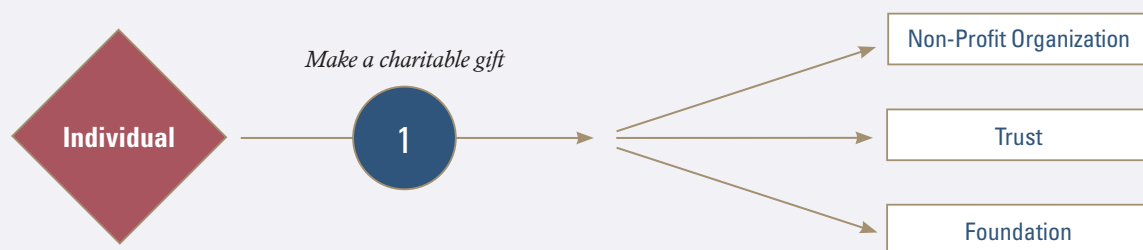
PHILANTHROPIC GIVING VEHICLES

There are many charitable giving vehicles that you may want to consider implementing as part of your overall estate plan. These include Charitable Bequests, a Charitable Lead Trust, Charitable Remainder Trust, Donor-Advised Fund and Private Foundation.

Some vehicles provide for charitable giving during your lifetime while others provide for the gift to occur upon your death; some provide for charitable giving while also generating lifetime income, which helps with retirement, estate planning and tax management; and other vehicles provide for a tradition of giving beyond your lifetime, thereby solidifying your philanthropic legacy across future generations.

You can select one or a combination of these vehicles depending upon your estate and tax planning strategies and your philanthropic goals. What follows is a description and an evaluation of these giving options so that you can determine which ones may be right for you.

CHARITABLE BEQUEST



What Are Charitable Bequests?

Charitable bequests are gifts that are made as part of your estate plan. The recipient of a charitable bequest can be a person, non-profit organization, trust or foundation. Bequests can be quite simple —“I leave \$100,000 to the ASPCA”—or they can be more complex and include conditions about how the gifts are to be used, such as “I leave \$500,000 to my alma mater for the explicit purpose of providing scholarships to those in financial need.”

How Bequests Work

To make a bequest, you can simply outline your instructions in a Will or in other estate planning documents, such as beneficiary designations or a Revocable Living Trust, as a part of your overall estate plan. You can detail different types of bequests in these documents and update them as your priorities or wishes evolve or change over time.

Four Types of Bequests

- **Specific Bequests** — Gifts that allocate a specific asset to a particular beneficiary. This bequest can include personal effects, jewelry, collectibles, artwork, automobiles, real estate or cash, among other items. For example: "I leave my home in Greenwich to the American Heart Association."
- **Demonstrative Bequests** — Gifts that include a particular distribution from a particular asset or source. For example: "\$1 million to be paid from my mutual fund at Merrill Lynch."
- **General Bequests** — Gifts that are a specific dollar amount or percentage taken from the estate's general assets. For example: "\$250,000 from my estate" or "10% of the value of my total assets."
- **Residuary Bequests** — Gifts made after all of the debts and expenses are paid and after other bequests are made. These are typically a percentage of the remainder of the assets or in some cases a share. For example, "50% of the remaining assets in my estate" or "10 shares of 40 total shares."

One common approach to charitable bequests is to leave specific or demonstrative bequests to family members or other individuals and then leave a portion of your residuary to a charitable organization. That way, the individuals get exactly the amount or items you want to leave them, and the charity gets the funds that remain. These bequests can be directed outright to your favorite charities, or to private foundations and charities that sponsor a donor-advised fund program, allowing the bequest to become an ongoing means of charitable support run by family members or trusted advisors.

Separate from a Will, you can designate a charity as the beneficiary of your retirement account to receive any remaining benefit after your death.

Advantages of Charitable Bequests

- Charitable bequests are flexible and can be easily updated. You can give during lifetime and/or incorporate a charitable bequest into your Will or other estate planning documents with just a few sentences and should circumstances or your wishes change, you can adjust future contributions by simply updating your documents.
- There is an unlimited federal estate tax deduction for charitable bequests against the value of an estate, making it a significant tool for reducing estate tax. It is possible for an estate to deduct charitable bequests of not only cash, but also property such as real estate, stock, IRAs, autos and other assets. Not all assets are treated equally for income tax purposes if inherited by heirs, so there also are benefits to carefully selecting which assets to use as a part of a charitable bequest to maximize the benefits to all involved.
- Retirement assets also are excellent candidates for charitable bequests after death because they can be among the highest taxed assets in any estate. There are two principal advantages to leaving these assets to charities. Firstly, doing so increases the impact of your bequest because, unlike individuals, the charity is not required to pay income taxes when it draws down on retirement account assets, and secondly, it decreases the federal estate tax burden for your family because your retirement assets pass directly to the charity and the distribution is generally deductible due to the unlimited estate tax charitable deduction.
- A bequest can serve as a lasting legacy at a charitable organization that supports the cause you care most about supporting. Nonprofit organizations have various ways of recognizing and honoring such gifts, depending on what is funded.

Considerations When Making Charitable Bequests

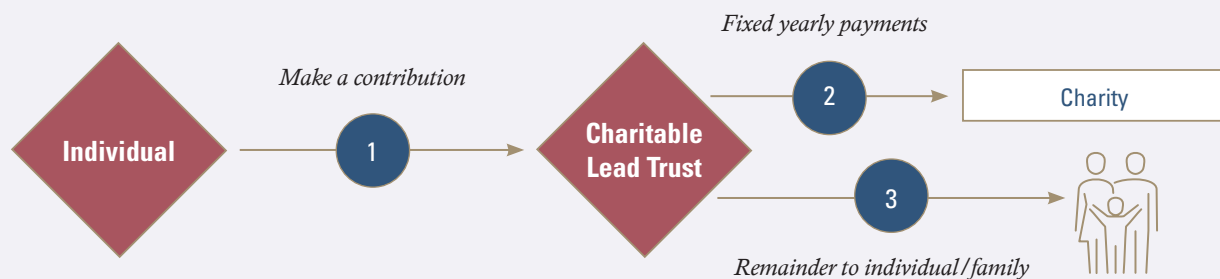
When making charitable bequests it is important to:

- Clearly communicate with your attorney what charitable causes or organizations you wish to support so charitable bequests can be incorporated into your estate planning documents and overall estate plan.
- Ensure that the beneficiaries of your charitable bequests are updated in your legal documents on a regular basis so that your final wishes will be implemented.
- Consider informing the charitable organization(s) of your intention to support them with your charitable bequests, thereby ensuring that the gifts can be accepted and will be used as you had originally intended.
- Speak with your attorney or financial planner to assess the complexity of your estate and identify which assets are best suited for distribution among the various recipients of your charitable bequests.

Is a Charitable Bequest Right for You?

If you are interested in a simple and easy way to contribute to charitable causes, are not overly concerned about charitable income tax deductions while you are alive or cannot fulfill your charitable intentions during your lifetime, and/or want to retain full control over which organizations are the beneficiaries of your estate, then a charitable bequest may be right for you.

CHARITABLE LEAD TRUST (CLT)



What Is a Charitable Lead Trust?

A CLT is an irrevocable trust that makes annual or more frequent payments to one or more charities for a charitable term. The charitable term can be a fixed number of years or it can be based on the lifetime of the donor or certain related individuals. At the end of the charitable term, any property remaining in the trust is distributed to family beneficiaries (typically children or grandchildren) or other non-charitable beneficiaries.

The amount paid to charity each year may be in the format of an “annuity” (a stated dollar amount) or a “unitrust interest” (a stated percentage of the value of the trust assets, as calculated annually). There is no minimum or maximum percentage that must be paid to charity. The percentage or amount to be paid to charity can remain the same each year or can be designed to increase over the charitable term.

Two Types of CLTs

- **Non-Grantor Lead Trust** —You, the grantor, will not receive an income tax deduction for establishing the trust. The trust is a separate taxpayer and therefore pays tax on any income generated. The trust can claim a charitable income tax deduction for the amounts it pays to charity on an annual basis, offsetting some or all of the income the trust may generate.
- **Grantor Lead Trust** —You, the grantor, may qualify for an immediate income tax deduction for the present value of the future income stream, subject to applicable limitations. However, if you die during the term of the CLT, there may be a recapture of the income tax deduction. As a grantor trust, the trust income is taxable to you during the term of the trust, and there is no annual charitable deduction for the amounts that are paid to charity because you already received an upfront deduction.

Advantages of a CLT

- The CLT generates a potential income stream for the named charitable beneficiary.
- Any assets remaining in the CLT upon its termination pass to your family free of estate and gift taxes. This includes any appreciation in assets or income earned on assets in excess of the predicted amount upon funding.
- Assets used to fund the trust are removed from your estate and may not only reduce the amount of tax your estate has to pay upon your death, but may also preserve funds for your heirs especially if the trust outperforms expectations, which can be easier to do in low interest rate environments.

- When funding the CLT, you make one gift to charity that is deductible for gift or estate tax purposes and a second, taxable gift to the individuals who will receive the remaining trust property when the charitable term ends.
- A charitable “annuity” trust can be structured to “zero out” the taxable gift so that no portion of your lifetime exemption from gift tax is used and no gift or estate tax liability is incurred in connection with the lead trust. A charitable lead “unitrust” can be structured to reduce, but not to “zero out,” the taxable gift.

Disadvantages and Other Considerations of a CLT

- Payment to the charitable organization must be made each year, irrespective of whether there is sufficient trust income available.
- A CLT requires the assistance of an attorney to set up the trust, as well as annual administrative management.
- Strict rules with regard to funding, investing and reporting can make annual compliance costly.

Is a CLT Right for You?

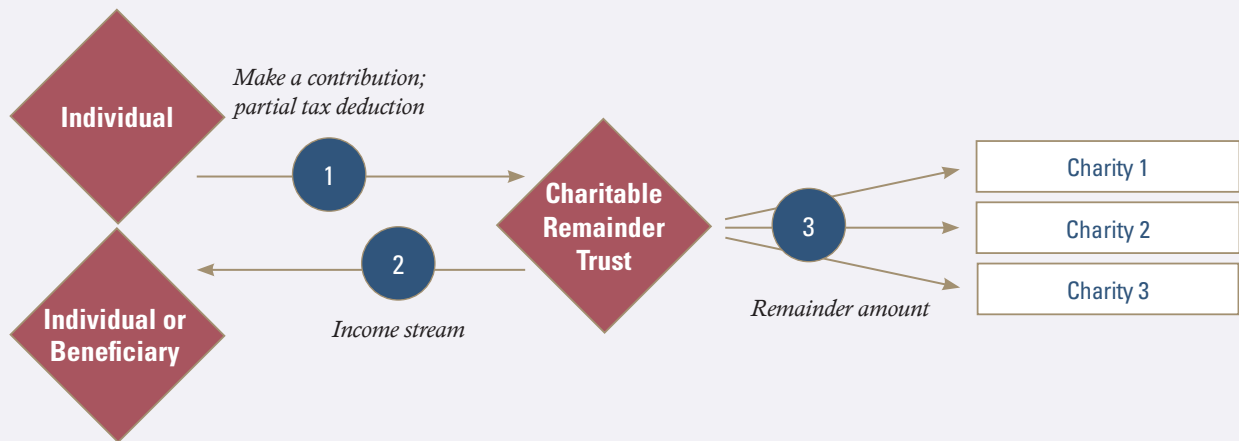
If you want to benefit one or more charitable organizations while reducing gift and estate taxes for your heirs, a CLT may be right for you.

“You look at things you enjoy in your life, but much more important is what you can do to make the world a better place.”

~

Paul Allen

CHARITABLE REMAINDER TRUST (CRT)



What is a Charitable Remainder Trust?

A CRT is a tax-exempt, irrevocable trust into which you transfer assets and retain the right to receive payments from the trust for your life. Upon your death, the charities you wish to benefit receive the assets remaining in the trust. The CRT may be included in your taxable estate, but if it is, it likely qualifies for the estate tax charitable deduction.

There are two types of CRTs:

- **Charitable Remainder Unitrust (CRUT)** — Distributes to the beneficiary a set percentage of the fair market value of the trust's assets, as revalued each year (a "unitrust amount").
- **Charitable Remainder Annuity Trust (CRAT)** — Pays a fixed amount (a stated dollar amount or a percentage of the initial value of the CRAT) to the beneficiary each year.

Advantages of a CRT

- The CRT provides you or others with a cash flow during your life while obtaining a current year personal income tax deduction.
- Funding a CRT during your life with low basis assets that, if sold by you, would produce a long-term capital gain will result in the greatest benefit for you. If the CRT will benefit a private foundation, it is generally preferable to fund the trust with qualified appreciated stock (unrestricted publicly traded securities that if sold would produce a long-term capital gain).
- A CRT can last for the lifetime of a beneficiary or the lifetimes of multiple beneficiaries, or for a term of years (not to exceed 20), as long as the value of the charitable remainder interest in the trust is at least 10% of the value of the assets transferred to the trust.
- For a CRAT, the annual distribution is the same dollar amount each year. For a CRUT, an individual will receive a set percentage (at least 5% but not more than 50%) of the fair market value of the trust's assets, as re-determined each year, in accordance with the terms of the trust, which can be in monthly, quarterly, semi-annual or annual installments. Annual distributions are taxable to the recipients.
- There are two potential income tax advantages to a CRT. The CRT can sell appreciated assets without paying any capital gains tax, and you benefit from an income tax deduction when you initially fund the trust.
- If you are the beneficiary of the CRT, you may retain the right to change the charitable

remainder beneficiaries, change any restrictions on how they will use the property to be distributed to them and change their relative shares in the remainder interest.

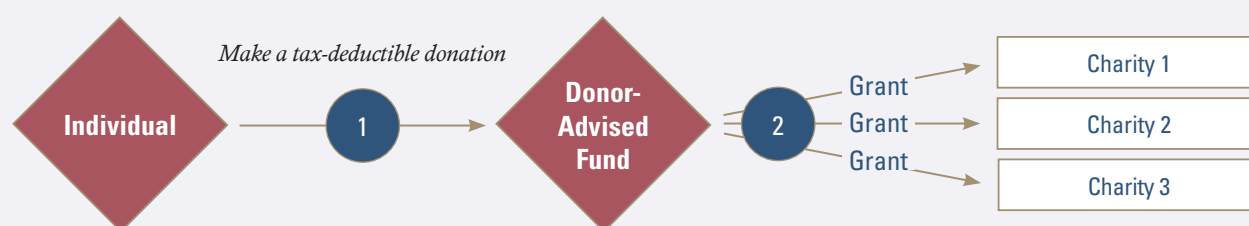
Disadvantages and Other Considerations of a CRT

- You should avoid funding a CRT with mortgaged property, property in which you will continue to own an interest, interests in partnerships that hold debt-financed property or which operate an active trade or business, S corporation stock and assets that are subject to a binding sales contract.
- You should also avoid, during your life, contributing retirement accounts and other assets that would cause you to recognize ordinary income if you transferred them to the trust. Illiquid assets, life insurance policies, options and tangible personal property also may present issues.
- Donated assets will be unavailable for your personal use so you should not contribute items, such as summer homes, that you plan to continue to use.
- Distributions to the beneficiary during the life of the CRT are included in the recipient's gross income for income tax purposes.
- There are limitations on the income tax deduction based on certain factors, including life expectancy, number of heirs and the type of CRT.
- After initial funding, you can make additional contributions to a CRUT, but not to a CRAT.
- Depending on who serves as trustee and handles the investment of the trust assets, the CRT might have to pay trustee fees and/or investment management fees.
- The trustee must file an information return for the CRT each year and must prepare a Schedule K-1 informing the beneficiary how to report trust payments for income tax purposes.
- There are costs involved in establishing the CRT, such as fees to prepare the trust agreement and gift tax return.

Is a CRT Right for You?

If you want to diversify highly appreciated assets while avoiding or postponing capital gains tax, increasing cash flow during your lifetime, obtaining a current income tax deduction and providing for your favorite charities upon your death, then a CRT may be right for you.

DONOR-ADVISED FUND (DAF)



What is a Donor Advised Fund?

A DAF is a charitable giving vehicle that involves opening and funding an account operated by a sponsoring organization that is typically set up as a public charity, including a community foundation or a financial institution. While you do not have an absolute right to select the ultimate charitable

beneficiaries when you receive distributions from the DAF, you do have the ability to make nonbinding recommendations to the sponsoring organization regarding the grants to be made from the DAF. Sponsoring organizations generally give full and careful consideration to the donor's wishes.

Advantages of a DAF

- You have the ability to make recommendations with respect to which charities will be the recipients of your funding, which is especially important if you feel passionate about a specific cause and want to be involved in how the funds are distributed.
- While it varies by sponsoring organizations, an account with a DAF can generally be established with a minimum initial donation of \$5,000 to \$50,000.
- You are eligible for a current year charitable income tax deduction of up to 60% of AGI for cash and 30% for securities and other non-cash assets contributed to the DAF.
- The DAF is simple and inexpensive to establish and maintain. You can streamline your recordkeeping and consolidate tax receipts in a single location.
- As a donor, you will often benefit from the experience of the sponsoring organization.
- Community organizations will generally permit you to create “designated funds,” an endowment fund which makes annual distributions to the charitable organizations you selected at the time the fund was created.
- You can also create a “field of interest fund” with a community organization which will identify and select the charities that fall within a particular charitable purpose or geographic area that will receive grants from the fund.
- Funds can be set up to continue after your death and you can name fiduciaries who can recommend how grants are to be distributed.

Disadvantages and Other Considerations of a DAF

- You must read the contract for the DAF account to determine the terms and restrictions imposed by the sponsoring organization as they may vary in terms of number of advisors or successor advisors on the account, fees and account minimums.
- Since the sponsoring organization is the owner of your account's assets, it is responsible for all investment decisions, administrative duties and reporting obligations.
- Control over investment decisions and charitable distributions are not absolute, but you may have recommendation privileges.
- Sponsoring organizations are required to ensure that grants are only made to qualified 501(c)(3) charities and used exclusively for charitable purposes, making it difficult to provide grants to private foundations and other entities that are not public charities.
- Sponsoring organizations charge fees for operating the fund.

Is a DAF Right for You?

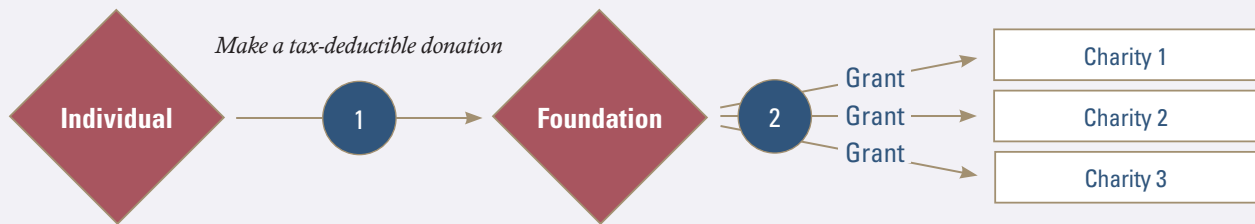
If you wish to obtain a current deduction while retaining the ability to recommend charitable recipients over time, a DAF may be right for you.

*“Never doubt that a small group of thoughtful, committed citizens can change the world.
Indeed, it is the only thing that ever has.”*

~

Margaret Mead

PRIVATE FOUNDATION



What Is a Private Foundation?

A private foundation is a tax-exempt charitable 501(c)(3) organization privately funded and controlled by an individual, family, corporation or small group of individuals. A private foundation is generally governed by a board of directors, trustees or officers whose responsibilities are to collect the charitable contributions, manage and invest assets and distribute grants to other charitable organizations. If, however, the foundation wants to operate a direct charitable program (such as a museum, arboretum, homeless shelter or “meals on wheels” program), then the foundation could be recognized as a “private operating foundation.”

A private foundation can be created as a not-for-profit corporation or as a charitable trust. The corporate form is normally chosen if a foundation will actively conduct charitable operations which might potentially expose the foundation managers to a greater risk of liability. The trust form is often used when the foundation's main purpose is grant-making.

Advantages of a Private Foundation

- Establishes an endowment for future giving, consolidates or centralizes charitable giving, and/or allows for the undertaking of a particular philanthropic project.
- Creates a forum for a family dialogue on social responsibility, personal values and charitable interests.
- Establishes a long-term legacy and allows family members to be employed by or to serve on the foundation's board of directors.
- Gives foundation managers complete control over grant-making and investment decisions.
- Can be funded with a variety of assets, including private equity, tangible assets, real estate and intangible personal property.
- Contributions to the private foundation qualify for income, gift and estate tax charitable deductions, subject to certain AGI limits for income tax deductions.
- Allows for flexibility in choosing ultimate charitable recipients over time.
- Limits the ability of future foundation managers to change the foundation's focus by imposing legally binding use restrictions on gifts to the foundation.
- Under various state laws (including Connecticut, New York and Florida), foundations can be perpetual, whether they are formed as a charitable trust or not-for-profit corporation.
- You can retain excellent control over the charitable entity for multiple generations, if desired.
- You are able to generate additional revenue for the foundation's charitable purposes through the proper investment management of existing foundation assets.

Disadvantages and Other Considerations of a Private Foundation

- While there are no minimum contribution requirements under federal or state tax law, given the costs of setting up a foundation and the administrative paperwork involved in annual government reporting activities, a substantial initial contribution greater than \$500,000 is generally suggested to initially establish the foundation.
- There are significant tax reporting and compliance requirements, as well as ongoing maintenance costs. Foundations must file an annual return, Form 990-PF, with the federal government, setting forth its assets and liabilities, its taxable income, information regarding the donations received and the grants and expenditures made during the year. A copy of the return must be filed with the attorney general's office in the state in which it is organized, the state in which it has its principal office, and any other state to which it reports or with which it is registered.
- There are some limitations to the income tax charitable deduction. The amount you can claim as an income tax deduction for a cash gift to a foundation is limited to 30% of your contribution base (i.e., adjusted gross income computed without regard to any net operating loss carry back) for the year, and to 20% of your contribution base for gifts of capital gain property.
- There are excise taxes to be paid by a foundation. A foundation's annual net investment income (ordinary income and capital gains) is subject to a 1.39% excise tax (that is akin to an income tax). If a foundation has unrelated business taxable income, it must pay tax on that income at regular trust or corporate tax rates.
- There are substantial penalties for failure to make timely distributions. Federal law requires a foundation to distribute an amount equal to roughly 5% of the average fair market value of its investment assets to other charitable organizations or to expend that amount directly for charitable purposes each year.
- There are complex operating rules and restrictions on how a foundation is operated. A foundation must be operated as a charitable organization and not for private benefit. Additionally, certain activities can give rise to excise (penalty) tax liability, such as acts of "self-dealing," excess business holdings, investments that jeopardize charitable purposes, and certain taxable expenditures (such as lobbying or engaging in political campaigns).

Is a Private Foundation Right for You?

If you are interested in becoming significantly more involved in your philanthropic giving strategies, establishing and overseeing an organization, recruiting staff and investment managers, managing the grant-making process, participating in investment decisions, and sponsoring charitable fund-raising events, then a private foundation may be right for you.

"We make a living by what we get, we make a life by what we give."

~

Winston Churchill

COMPARING CHARITABLE GIVING VEHICLES

	Charitable Bequest	Charitable Lead Trust	Charitable Remainder Trust	Donor-Advised Fund	Private Foundation
Management of Investments	Charity recipient spends or manages donated funds.	Trustees manage investments; must consider fiduciary duties and prudent management/prudent investor standards.	Trustees manage investments; must consider fiduciary duties and prudent management/prudent investor standards.	Donors recommend investments, but must remain within confines of contract.	Trustees or Directors manage investments; must consider fiduciary duties and prudent management/prudent investor standards.
Tax Compliance & Reporting	Donor reports charitable contributions on their annual income tax return. Donor must substantiate gift.	Trust must complete its own tax returns; depending on type, donor may qualify for income tax deduction or estate or gift tax deduction.	Trust must complete its own tax returns; donor may qualify for income tax deduction and/or estate or gift tax deduction.	Sponsoring organization reports all contributions and distributions on its own Form 990. Donor reports contributions on their income tax return.	Foundation must file Form 990-PF once entity is formed; any employment-related filings; and relevant state filings.
Administrative Burden on Donor	Minimal	Yes (on Trustee)	Yes (on Trustee)	Minimal	Yes (on Trustees or Board)
Minimum Grant or Gift Amounts	No	Annual unitrust or annuity payment.	Annual unitrust or annuity payment.	No	Mandatory annual distribution of at least 5% of the average monthly fair market value of the private foundation's assets.
Grant Recipients	Public charities, private foundations.	IRS-qualified public charities and/or private foundations.	IRS-qualified public charities and/or private foundations.	IRS-qualified charities.	Many organizations and—under certain circumstances—individuals, as long as the grant is made for a charitable purpose and complies with IRS regulations.
Creates a Stream of Payments to Individual(s)	No	No, but does allow for the transfer of property to one or more recipients with possible tax savings.	Yes, at a pre-determined annuity or unitrust amount.	No	No
Additional Gifts Possible	Yes	Yes (only in the unitrust type).	Yes (only in the unitrust type).	Yes	Yes
Termination	N/A	Exists for term of years or lifetime of specified individual(s).	Exists for term of years or lifetime of specified individual(s).	Depending on the contract, donor may be able to select successor grant recommender—individuals with advisory privileges.	May exist in perpetuity. To terminate, must follow IRS guidance or risk private foundation termination tax.

DISCOVERING YOUR PHILANTHROPIC MISSION

Challenges Facing Donors

Affluent donors face many challenges when it comes to philanthropic giving. According to the most recent U.S. Trust Study of High Net Worth Philanthropy, high net worth donors reported that their greatest challenge when it comes to charitable giving is identifying what causes they care about and deciding where to donate.

Other challenges include understanding how much they can afford to give, monitoring donations to ensure they have the intended impact, becoming more familiar with nonprofits and how they serve their constituents' needs, and exploring how to engage the next generation in philanthropic giving.

Discovering and Defining Your Mission

What follows are a series of questions you may want to consider asking yourself or discussing with your family that will help you identify your own personal challenges, preferences and objectives as they relate to charitable giving.

Going through this questioning and discovery process will also help you to more clearly define your overall philanthropic mission.

Key Questions to Consider

- How important is charitable giving to me?
- What are my key reasons or motivations for wanting to give to charitable causes?
- Do I have a specific philanthropic vision or purpose?
- Do I want to leave behind a lasting philanthropic legacy?
- To what extent are income, estate and gift tax deductions factors when considering my charitable giving?
- What are my short-term and long-term goals with respect to my charitable giving?
- What causes or issues do I care most about or feel passionate about and why?

“If you are the luckiest 1% of humanity, you owe it to the rest of humanity to think about the other 99%.”

~

Warren Buffet

- What specific areas do I want to support? For example:
 - Basic Human Needs
 - Religious or Spiritual
 - Healthcare or Medical Research
 - Youth/Family/Disabled
 - Disaster Relief
 - Animal Welfare
 - Education (K–12)
 - Higher Education
 - Arts, Culture and Humanities
 - Environment
 - International Aid
- Would I like to fund organizations at the local, state, national or international level?
- How much of my assets would I like to allocate to charity and which assets do I want to use?
- Do I want to only give to charity during my lifetime or do I want to only give to charity after my death or both?
- How much control do I want to have over the distribution of my assets to charitable causes?
- Do I wish to engage my children and grandchildren in charitable giving?
- Do I want to operate a charitable organization?
- How can I determine if my giving is making a difference or having an impact?
- To what extent will I be personally fulfilled from engaging in charitable giving?

*“Giving frees us
from the familiar
territory of our
own needs by
opening our mind
to the unexplained
worlds occupied
by the needs
of others.”*

~

Barbara Bush

REALIZING YOUR PHILANTHROPIC MISSION: HOW CUMMINGS & LOCKWOOD CAN HELP

Attorneys in Cummings & Lockwood's Private Clients Group can help you clarify and realize your philanthropic mission and goals. Drawing on our deep resources and experience in estate planning and philanthropic giving, we also can work closely with you to select, design and implement a charitable plan that is right for you and is fully integrated with your overall estate plan.

Whether you are an individual who wants to give back to your community by funding a charitable bequest or donor-advised fund, or a family with a philanthropic mission that wants to establish a private foundation as a lifetime legacy, our attorneys can assist you every step of the way.

Attorneys in Cummings & Lockwood's National Charitable Planning Group collaborate with our trusts and estates attorneys to help individuals and families with all aspects of their charitable giving. From lifetime and testamentary single donations to public charities to the creation of complex charitable trusts and the formation of private foundations, Cummings & Lockwood has extensive experience structuring charitable gifts and donations to ensure that they meet our clients' goals in the most tax-efficient manner possible.

Our attorneys assist clients in the creation, implementation, monitoring and administration of various charitable vehicles, such as Outright and Restricted Gifts, Charitable Bequests, Charitable Lead Trusts, Charitable Remainder Trusts, Donor-Advised Funds and Private Foundations.

For more information about how Cummings & Lockwood can help you realize your philanthropic mission, please contact one of our private client attorneys today or visit our website at www.cl-law.com.

"If life happens to bless you with talent or treasure, you have a responsibility to use those gifts as well and as wisely as you possibly can."

~

Bill and Melinda Gates

Do what you can, with what you have, where you are.

~

Theodore Roosevelt

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