Designing an Estate Plan Roadmap for Your Donor

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Overview of
Key Estate Planning Documents

- Documents for Planning during Lifetime:
  - -Power of Attorney for Financial Matters
  - -Health Care Power of Attorney and Living Will
  - -Revocable Trusts

- Documents for Planning for Death: Wills and Trusts

Powers of Attorney

- Practical purpose: allow someone to make decisions for you if you are temporarily or permanently unable to do so yourself

- Allows third parties to give information to the agent, accept signed documents from agent (as POA) and make decisions for the principal

Powers of Attorney

- Legal Purpose: Give authority to another to make decisions on your behalf
- Principal → Agent (Attorney-in-fact)
- Could be more than one agent; important to have successors

Powers of Attorney

- Durable vs. Springing: When does the agent assume authority?

  -Durable: Agent can act upon execution of POA

  -Springing: A doctor (or 2) must determine that the principal can no longer “manage own affairs” before agent can act

Powers of Attorney

- Specific Powers:
  - -Financial transactions
  - -Buy/sell real estate
  - -Enter into contracts
  - -Gifting (PA law)
    - Limited—limited to annual gift tax exclusion
    - Unlimited—any amount to a designated class, consistent with estate plan; should always be in best interests of principal (i.e. tax or asset protection planning)
      - -Can agent make a gift to self?

Health Care Powers of Attorney and Living Wills

- Allows an agent to make health care decisions for a principal but only if principal cannot make decisions for self

- Living Will- specific provisions for types of treatment (ex. CPR, antibiotics) and end-of-life decision-making

Capacity Concerns

- What if donor has agent acting as POA?

- General information:
  - -Change of address
  - -Change of bank account

- Should a gift discussion continue?
  - -Concerns for organization: legal, PR, goodwill with family
  - -Achieve donor’s goals?
  - -Best practices: documentation

Wills v. Revocable Trusts
What's the Difference?

- Will: Governs disposition of probate assets at death
  - Revocable until death of donor
  - Filed with the Register of Wills/Court Records at death (public)

Probate: Court procedure by which Will is proved valid or invalid; includes matters relating to administration of estates; person appointed as fiduciary for estate (e.g. executor)

Probate assets include:

- ✓ Bank accounts
- ✓ Stocks
- ✓ Real Estate
- ✓ Personal Property

What is a Trust?

Fiduciary relationship in which person or entity (i.e. Trustee) holds legal title to property subject to an obligation to hold/use the property for the benefit of another person/entity

Trust may be revocable or irrevocable, depending on goals of trust

Living Trust (Revocable Trust)

Trust which may be amended or revoked by Trust creator (“Donor”) which makes provision for distribution of income and/or principal to the Donor during Donor’s lifetime and often distributions to other beneficiaries after the Donor’s death.

NOTE: Assets transferred to Revocable Trust prior to death ARE NOT subject to probate by ARE subject to death taxes

Benefits of Revocable Trust

- Centralized Investment Management
- Management in the event of Donor’s incapacity
- Privacy (assets not subject to probate)

Nonprobate Assets

- Retirement Benefits
- Life Insurance
- Assets placed in revocable trust
- Payable-on-death accounts
- Joint Property with right of survivorship

What assets make good planned gifts?

- Assets which carry income
- Highly appreciated assets

Assets which carry income

Most Retirement Plans (other than Roth IRAs) are subject to income taxes when distributed

Charity does not pay income (or estate) taxes on distribution

Highly Appreciated Capital Assets

Capital assets held for over one year: subject to capital gains tax upon transfer ("realization event")

Donation of long-term appreciated assets to public charity receives income tax deduction and no capital gains taxes apply to transfer

Examples of Capital Assets

- Stocks
- Bonds
- Mutual Funds
- Real Estate: rental, business purpose
- Collectibles: art, cars, antiques

Example:

Donor wishes to make a gift to Charity in the amount of $10,000. Donor may make the gift in cash or may make the gift with securities valued at $10,000. The Donor has owned the securities for over a year and purchased them for $2,000. Donor's income tax bracket is 39.6%.

If Donor makes the gift in cash:

Income tax savings: $3,960 ($10,000 x 39.6%)

If Donor makes the gift in stock:

Income tax savings: $3,960

Capital gain tax avoided: $1,600 ($8,000 x 20%)

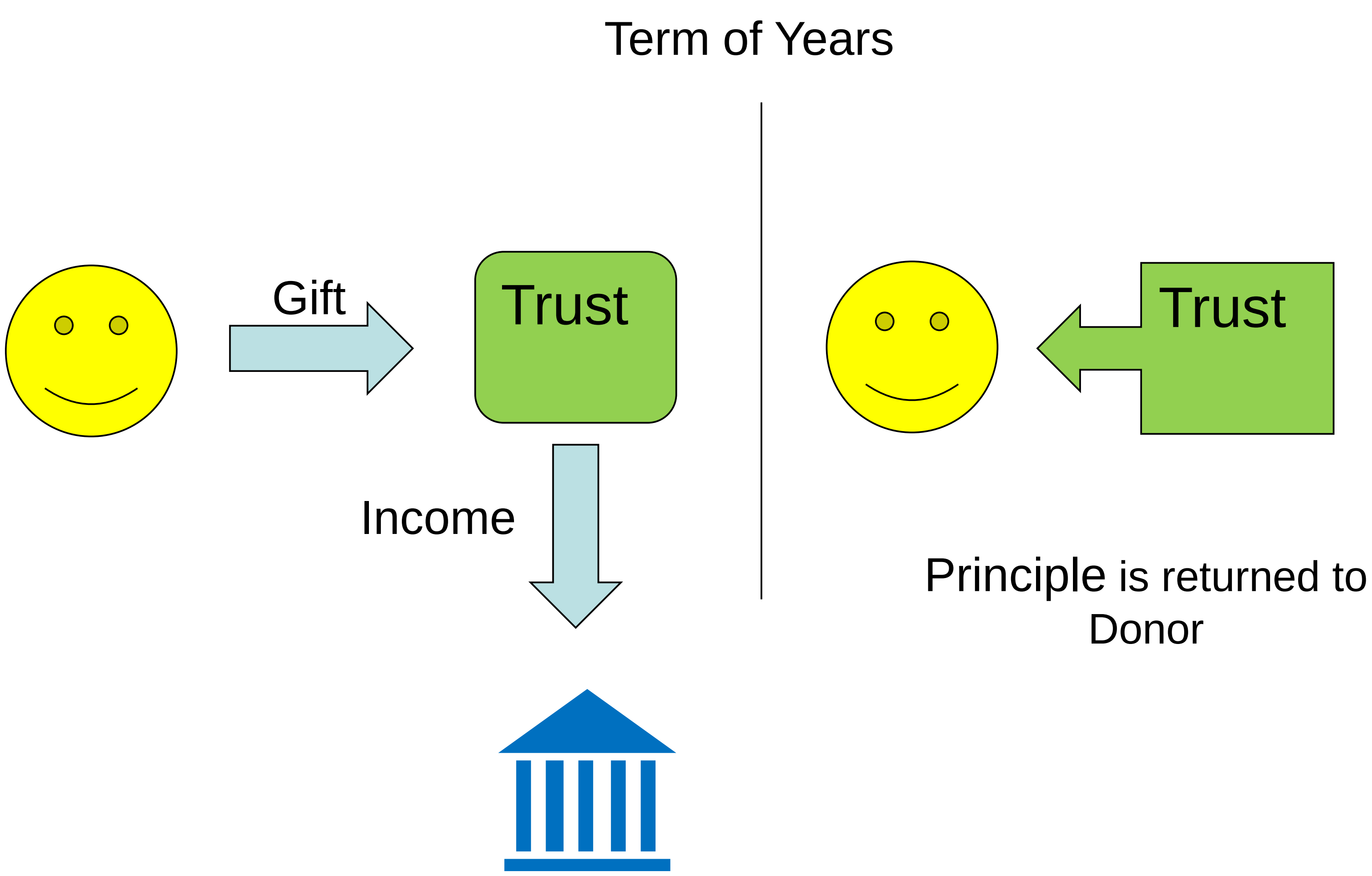
Split- Interest Charitable Trusts

- Irrevocable trusts that produce income for a beneficiary and have a charitable purpose

- Income to charity→ Charitable Lead Trust

- Income to donor/third party→
  Charitable Remainder Trust

Charitable Lead Trust



Charitable Lead Trust—How Does It Work

- Donor makes gift to CLT. Assets are held in trust and the income interest is paid to the charity for a term of years or lifetime of an individual.

    -The income or "lead interest" may in the form of an annuity (CLAT) or unitrust (CLUT).

    -May be a grantor trust (donor can take charitable deduction, but taxed on income) or non-grantor (trust takes deduction and pays tax)

- After the trust terminates, the principal of the trust is returned to the donor or beneficiary.

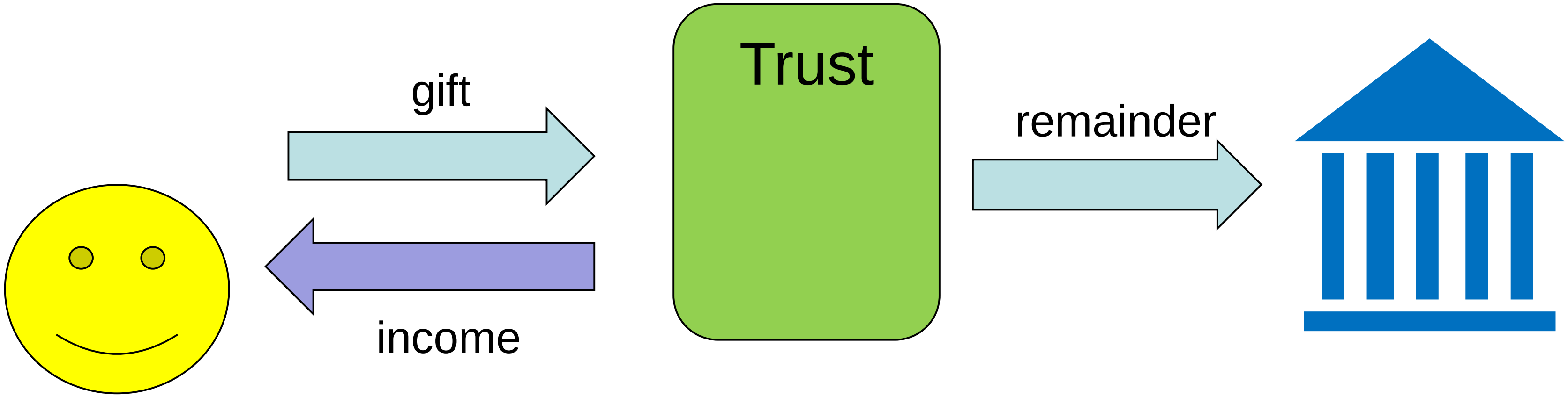
Charitable Lead Trust- Benefits

- Allows donor or beneficiary to receive principal back after a term of years; charity benefits from income payments

- Can be especially beneficial as a testamentary tool to eliminate or reduce federal estate or gift tax

  -beneficiaries may gain significant value, but must wait until end of term to receive their inheritance

Charitable Remainder Trust



Charitable Remainder Trust—
How Does It Work

- Donor makes gift to CRT. Assets are held in trust and the income interest is paid to the donor (or beneficiary) for a term of years (not > 20 years) or lifetime of an individual.

    -The income interest may be in the form of an annuity (CRAT) or unitrust (CRUT).

    -Donor receives charitable deduction for remainder interest.

- After the trust terminates, the principal of the trust is returned to the donor or beneficiary.

Charitable Remainder Trust--Benefits

- Allows donor or beneficiary to receive income for lifetime or term; charity benefits from remainder principal
- Avoid capital gains if funded with highly appreciated assets
- Turn non-income producing asset (cash) into source of guaranteed income
- Charitable deduction for donor in year of gift

FACT PATTERN:

Jane Daniels is a 1969 of Universal University. Jane is divorced, has no children, but has a close-knit group of friends. Jane is generally in good health and is living comfortably through good planning and frugality. Now age 77, Jane is considering her estate plan and wants to support her alma mater.

Her goal is to leave ½ of her estate to her two good friends and ½ to her alma mater. Her assets total $2 million, as follows:

- $ 1 million held in her IRA
- $300k cash
- $700k stock

Crafting Jane's Estate Plan

- Probate vs. non-probate assets

  -How should her estate plan be drafted to consider both her probate and non-probate assets?

Her goal is to leave ½ of her estate to her two good friends and ½ to her alma mater. Her assets total $2 million, as follows:

- $ 1 million held in her IRA
- $300k cash
- $700k stock

Crafting Jane's Estate Plan

It is important to consider Jane's total assets to ensure that her goal is met.

- Her IRA is a non-probate asset—controlled by beneficiary designation
- Her cash and stock—controlled by will or revocable trust (unless in POD account)
- Language in her will should include non-probate assets if % of her *total* estate is needed to reach the values she intends

Crafting Jane's Estate Plan

- Tax Considerations

  -How should Jane's estate plan designate her assets to achieve her goal?

Her goal is to leave ½ of her estate to her two good friends and ½ to her alma mater. Her assets total $2 million, as follows:

- $ 1 million held in her IRA
- $300k cash
- $700k stock

Crafting Jane's Estate Plan

- IRA has significant income tax liability, so if given to charity all $1 million can be used
- If friends each receive equal interest in cash and stock, less tax will be owed and they will receive closer to $1 million

    -if long term capital gains, 15-20% due on stock

Questions?