

Your charity is named a beneficiary of a trust? Great! Now what?
Shedding light on planned gifts where there is otherwise darkness and mystery

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What does it mean for a donor to name your charity in a trust?

First and foremost, it means that someone is so passionate about your mission and how your charity carries out its work that it has in essence included you in their plans as if you were a member of their family. From a relationship perspective, that's a very big deal.

However, what if the gift that is meant for your organization isn't going to be realized by a specific date, and it's not really clear what the amount of the gift will be. In other words, it is not known what your charity will receive or when. How can a charity determine what it means in terms of the ultimate gift to charity, and what should a charity do in these situations?

Well-intentioned donors leave charities in the dark.

It's actually a fairly common story in the non-profit world: In the course of a conversation about a donor and former board member's long-term support of the charity with the charity's development officer or executive director, the donor mentions that they have created a trust that will ultimately benefit the charity. "That's wonderful!" the charity staff person remarks; "Thank you so much!" and no further mention is made, but a note of the conversation and

the mentioned gift is made in the donor's file. Probably the charity doesn't have on staff a planned gift officer to whom the conversation would otherwise normally be related.

The staff person assumes that the gift is a charitable remainder trust that will result in a gift to the charity upon the donor's death, because that's what they have heard people commonly do when they create trusts with interests passing at a later date to charity.

Years later, the staff has turned over, and a new development officer is reviewing the donor's file and reads the note. There's no mention of the type of trust, who else is benefitting from the trust, how it is funded or what any other of the terms might be. In fact, the development officer is reviewing the file because a member of the board just called to say that the donor passed away, and "I know you'd want to know, as they had been a board member long ago."

Well, it would hardly be appropriate to call the family and ask about the trust at this point. But there being nothing else in the file about the trust, the charity is completely "in the dark" about what that gift means. But of course, a gesture of condolence would be appropriate, and perhaps attendance at visiting hours or the memorial service by a trustee or the executive director of the charity would be respectful. But, then what should be done? Anything? Or just let the matter alone and passively wait for further news of the gift in the course of a probate estate?

There are any number of scenarios that could follow at this point. It would be far preferable to never be in this

situation. Let's look back to that conversation where the gift in a trust was first mentioned. In addition to expressing how grateful the charity is for the gift, it would have been perfectly appropriate to ask the donor if they would be willing to share some information about the gift. It might not take place right at that moment, but perhaps in an intentionally planned and scheduled meeting to follow-up specifically about the gift.

Possible action by charity: Explore the Donor's Purpose for the gift

A good place to start would be (after thanking them AGAIN for including the charity in their planning) "Is there a specific purpose you have for this gift? Perhaps a particular program, named fund or other aspect of our operation you wish to support?"

Assuming that leads to a conversation about the donor's intent for the gift, it might also then make sense to ask "what is your intention for the size of the gift?" which would be closely related to their purpose of the gift.

For example, let's say the charity is a college, and the college has an endowed chair minimum of \$2,000,000 and the donor has indicated that is the purpose of their gift. That would be the direction the conversation should go, so that in confirming the understanding of the purpose, it is clear the donor understands about a minimum gift amount to achieve that purpose.

Or perhaps the donor indicates that the gift is intended as a scholarship fund, and the minimum for such funds is

\$100,000. A similar confirmation would be appropriate in the conversation.

Moreover, it is important to confirm that the charity can use the gift the way the donor would like them to. It may be that the donor's gift is intended to address programming that is either beyond the mission of the organization or beyond its capacity. These types of issues need to be addressed to avoid frustrating the donor's purposes.

Possible action by charity: Find out who is named as Trustee

Then, it would be perfectly appropriate to ask "who is the trustee of the trust?" and how to get in touch with them. The reason for this: Under the Uniform Trust Code, enacted in many states (including Maine as of July 1, 2005) if a charity is named as a contingent beneficiary of a trust – even if the ultimate amount of the gift to charity is unknown and the date that it would actually be payable to the charity is uncertain – in most cases the trustee must provide to the charity a copy of the trust and an annual statement, if the charity requests it. This provision of the law was intended to put each charity in the position of being able to protect its interest – even if a future interest – with greater knowledge of the terms of the trust and greater ability to scrutinize its ongoing administration and investment management.

Ask the Trustee for a copy of the trust and an annual statement

Once you know who the trustee is, you have the opportunity to diplomatically introduce yourself and tell them that you (or whoever is appropriate at your

charity) would be the person who should receive that copy of the trust and annual statement as contingent beneficiaries of the trust.

Review the Terms of the Trust to learn more about the gift

So, let's say the trustee is contacted and the charity receives a copy of the trust. What it indicates is that the donor has created a charitable remainder unitrust. That trust will provide a payment of 7% of its market value each year to the donor's youngest child until they die, then the remainder will go to the charity. The staff person then learns through other board members that the donor's youngest child is a 45 year-old who, unlike his siblings, has been unable to become financially independent. No one is surprised that the father created this trust for his son who is unable to responsibly handle financial matters.

Make a reminder that you are to receive an annual statement of the Trust account

Now what? It is likely that as of January 1, the annual statement will be produced and a copy sent to the charity, if the trustee is compliant with the applicable law. That statement should show what activity (funds in/funds out) has taken place over the past year, and what the trusts assets are: A statement of the market value of the portfolio.

What the Statement will allow your development and finance offices to estimate about the gift

At this point, the market value of the portfolio and the age of the life beneficiary can be used to calculate the

estimate of the value of the gift using the National Committee on Planned Giving Valuation Standards. This information should be shared with the finance office who will find useful the estimate of the actual size and expected time frame for the gift when it is ultimately received, for planning purposes in creating the endowed chair.

The development office will find this information valuable as a means of measuring the gift's ultimate estimated value. It may also dictate an appropriate level of stewardship of the relationship with the donor's family for the charity's continued gratitude towards the donor and his vision.

Each year the gift should be revalued when the statement is received. It may also be wise to have the charity's advisors (an accountant or lawyer) review the statement to see if anything related to the administration of the trust or the management of its assets appears unusual or of particular detriment to the charity's interest.

Conclusion

Asking the right questions, based in good donor-stewardship and the legal rights of named beneficiaries, will help your charity maintain good relationship with planned giving donors and their families and aid in evaluating the value of gifts and planned giving programs overall. It is a tool for helping your charity to plan for what it should anticipate will be added to endowed funds for generations to come.

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