THE ROLE OF PLANNED GIVING IN MAJOR GIFTS

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Kathryn W. Miree is President of Kathryn W. Miree & Associates, Inc., a consulting firm that works with boards and staff of nonprofits and foundations to develop administrative policies, structure, and planned giving programs. She received her undergraduate degree from Emory University and her law degree from The University of Alabama School of Law. She spent 15 years in various positions in the Trust Division of AmSouth Bank where she was the manager of the Personal Trust Department before joining Sterne, Agee & Leach, Inc. to start its trust company. She established Kathryn W. Miree & Associates, Inc. in 1997.

Ms. Miree is a past president of the National Committee on Planned Giving, a past president of the Alabama Planned Giving council, a past president of the Estate Planning Council of Birmingham, Inc. and a past member of the Board of the National Association of Estate Planners & Councils. She currently serves on the boards of the United Way of Central Alabama, Inc. (board vice-chair), The Altamont School (board chair), and The Capstone Foundation. She also serves as a member of the Merrill Lynch National Attorney Advisory Board and the American College Wallace Chair/Chartered Advisor in Philanthropy Advisory Board.

Ms. Miree is a frequent lecturer, co-author of The Family Foundation Handbook with Jerry J. McCoy (Aspen Publishers 2001) and author of The Professional Advisor's Guide to Planned Giving (Aspen Publishers, 2001) and co-author of a bi-monthly newsletter, Family Foundation Advisor (Civic Research Institute). She serves on the Editorial Advisory Boards of Planned Giving Today and Planned Giving Design Center. Her clients include a variety of nonprofits and foundations across the country.

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I. What is Planned Giving?

A. A Classic Definition

“Planned Giving," one of the fastest growing segments of nonprofit fundraising. It can be broadly defined as the practice of planning a charitable gift in the context of a donor’s current financial plan, retirement plan, or estate plan. Stated another way, planned giving is the process by which the donor, the donor's financial advisors, and the nonprofit's development officers work together to determine the most effective method for making a gift to a nonprofit organization.

Effective planning enhances all types of charitable gifts. The process encompasses as simple a concept as using appreciated stock to make an annual contribution to charity to one as complex as funding a charitable remainder trust with closely-held stock that is later redeemed. Planning allows the donor to choose the asset that best meets his needs, to use the gift form that best accomplishes her overall estate planning goals, to select the best timing for the gift, and to create a charitable gift that best meets the needs of the nonprofit. This process also allows nonprofit organizations to form closer relationships with their donors and to develop large gifts for endowment or capital expenditures.

In the past, the term “planned giving” has been defined narrowly to describe deferred gifts such as gifts under will, beneficiary designations of life insurance and retirement plans, or gifts of remainders under charitable remainder trusts or gift annuities. This narrow definition is no longer appropriate. Sometimes, the most effective gift is one that meets the donor’s current income needs, or creates a program for charity today. Gift planning allows the parties to work through all issues to achieve the most satisfactory result. This can only be achieved in a collaborative atmosphere involving all parties – the donor, the donor’s advisors, the charity, and the charity’s advisors.

B. The Role Of Planned Giving In the Nonprofit Development Program

Annual giving, major giving and planned giving have traditionally been approached as separate fund-raising exercises. Nonprofits that have strong annual giving, major giving and capital campaign programs are often hesitant to introduce deferred giving options because of the concern that the donor will make only one type of gift. Development officers fear that if a donor has a choice between a major gift (a gift today) and a planned gift (a gift tomorrow) the donor will always defer the choice. The stronger approach is to introduce planned giving as an integral part of the development program of the nonprofit.

The clearest model of how planned giving relates to an organization's fund raising is found in James M. Greenfield's book *Fund-Raising Fundamentals*.[1] That model reflects a progression of giving based on a donor's relationship with the organization:

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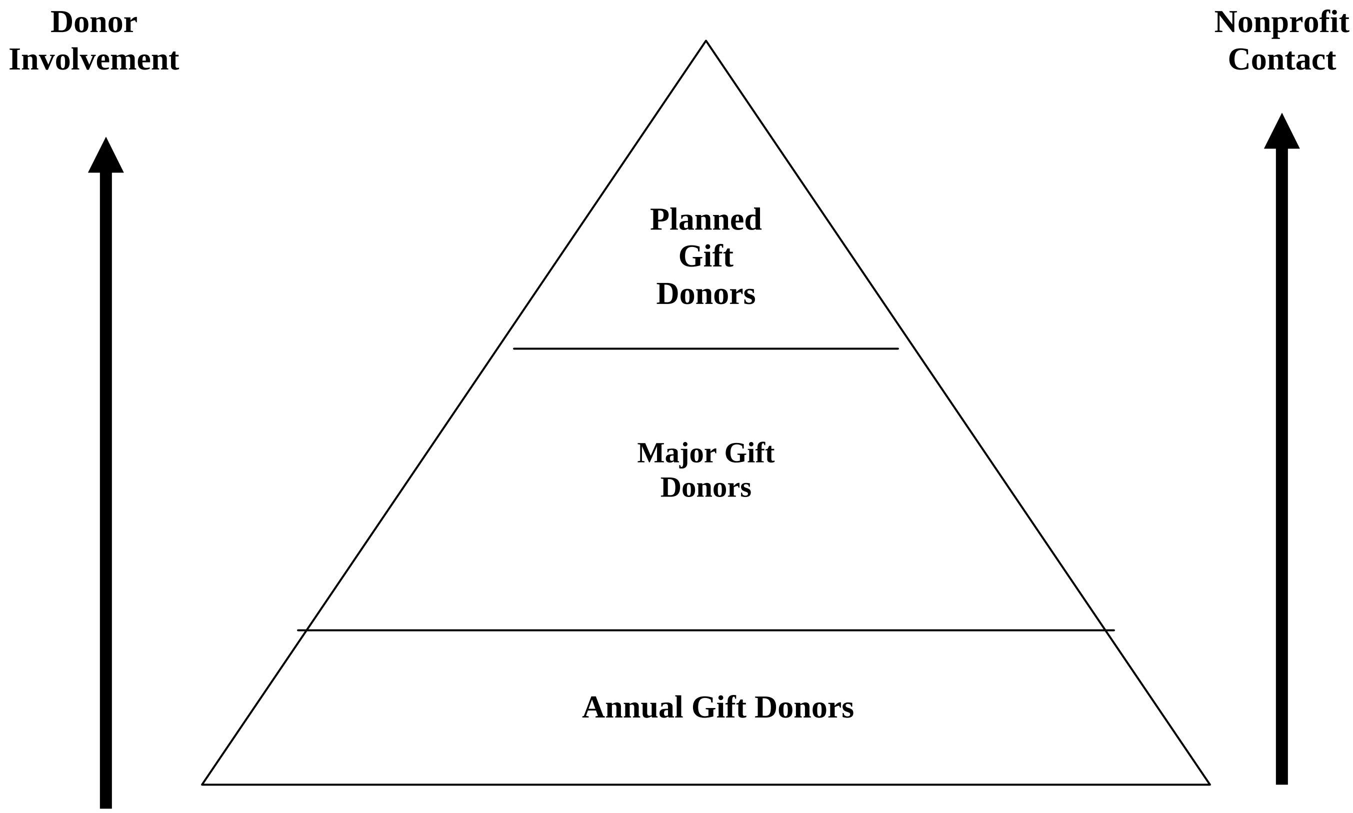
[1] Greenfield, James M., *Fund-Raising Fundamentals: A Guide to Annual Giving for Professionals and Volunteers* (1994, John Wiley & Sons, Inc.)



1. Annual giving

Annual Giving is the most basic fund-raising function and is designed to raise funds for annual operating costs. Most of the development officer's efforts in the annual campaign are dedicated to identifying potential donors. Annual campaigns may take the form of calling, letter writing, direct mail, or personal solicitation. Large numbers of volunteers and personal contacts generally breed success. Nonprofits may prioritize and devote much of the organization's fund-raising efforts to the annual campaign and will generally have a development officer who counts the job as a top responsibility. The effort generates immediate, measurable results.

2. Major Giving

Major giving also gets significant attention from nonprofits due to the size of the potential gifts. Major giving, which takes the donors to the next level of interest and involvement in the nonprofit, may be a part of a capital, endowment or annual campaign.

The solicitation of a major gift requires a great deal of planning and preparation. ASF must develop a strong case statement for support. This case statement must be based upon a clear organizational mission and a long-term strategic plan. The solicitor must conduct research on the donor, the donor's family, the donor's goals and the donor's case history. And finally, the development officer and calling volunteer make a personal visit to ask for the gift.

Major gift solicitations represent an efficient way of raising large sums of money and identifying new donors. Many nonprofits now staff a major gift position within the development office, or assign responsibility for major gift development to an existing position.

3. Planned Giving

Planned giving is often the last element of the development plan, although it is rapidly taking its place as an "essential" part of the overall fund-raising effort. Churches, schools and hospitals have led the nonprofit sector in developing planned giving programs. The overwhelming success experienced by these organizations, coupled with the need to endow annual giving and major gift donations, has led the remainder of the nonprofit world to realize both the need and the benefit of a planned gift program.

Planned gifts are generally the result of an ongoing relationship between the nonprofit and the donor. Donors that invest in the future of the charity through a planned gift must have confidence that the mission is important, that the organization will continue to meet that mission in the future, and that the donor's gift is critical to the ability of the organization to discharge that mission. Where a major gift requires confidence in present leadership, a planned gift requires confidence in future leadership.

Nonprofits staff planned giving in various ways. Many organizations have full time planned giving officers, while other organizations have no planned giving staff at all. In some cases planned giving consultants augment the activities of the development officer and provide backup. The key is the contact with the donor. Planned gifts required the highest degree of interaction and long-term development.

II. The Opportunity in Planned Gifts

There has never been a better time to solicit major and planned gifts. The awareness of planned gifts among donors is growing, and many have more assets than they expected at this point in their lives.

A. The American Association of Fund-Raising Counsel Trust for Philanthropy *Giving USA 2004*

Charitable giving in the United States is measured each year by the AAFRC Trust for Philanthropy. The report released in June 2004 shows that Americans gave $240.7 billion to charity in 2003, an increase of 2.8% over 2002 figures in dollar value but an increase of only .5% over 2002 when the inflation adjustment is applied.[2] This figure represented 2.19% of the United States gross domestic product (GDP), evidencing the impact charitable giving has on the U.S. economy.[3]

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[2] www.aafrc.org/press_releases; Alison Stein Wellner, *Modest Signs of Rebound*, The Chronicle of Philanthropy (Vol. XVI, No. 18, June 24, 2004), pp. 27-31.
[3] GDP for 2003 was $10,987.9 billion in current dollars.

Giving USA is considered the most comprehensive report on giving in the United States. The Center on Philanthropy at Indiana University researches and writes the report, basing its analysis on itemized deductions, Form 990 revenue figures, charity surveys, and relevant economic and research data from private and government institutions to make its projections. Initial figures are often subsequently adjusted, since 70 percent of the public does not itemize, smaller charities and organizations such as churches are not required to file Form 990s, and the IRS does not release its tax statistics until two years after the filing date.

Gifts from individual donors during life and at death comprised 83.5 percent of all giving in 2003.[4] Individuals made outright contributions of $179.36 billion, an increase of 2.5 percent in real dollars, or a .2 percent increase when adjusted for inflation.[5] These outright gifts from individuals represented 74.5 percent of all giving. Bequests from individuals, totaling $21.6 billion, represented 9 percent of all giving.[6] The 2003 figure represented a 12.8 percent increase over 2002, the greatest increase of all giving categories.

Foundations gifts decreased to $26.3 billion in 2003, a 2.5 percent drop from 2002 in current dollars or a 4.7 percent decrease when factored for inflation.[7] Most foundations have experienced significant decreases in investment portfolios over the last three years, resulting in lower grant distributions. Corporations contributed 4.2 percent, a 4.2 percent increase over prior year, or a 1.9 percent increase after inflation is considered.[8] A summary of sources of charitable gifts in 2003 is provided in Table 1. All amounts are reported in billions.

Examining the recipients of the year's charitable gifts provides insights into trends in donor priorities. International affairs experienced the greatest growth of all charitable interests, advancing 12 percent to $5.3 billion.[9] (This giving category also showed the greatest increase from 2001 to 2002, growing 10 percent over that period.)[10] The increase in giving to international affairs reflects the growing commitment to global solutions and increased awareness of need developed through travel, the media, and the Internet. The increase occurred despite the increased administrative burden imposed on such gifts by the Patriot Act.[11]

The top two organizations attracting funds in 2003 were religious organizations and educational institutions, the perennial winners. Religious organizations were the top dollar recipients in 2003, attracting $86.39 billion, or 35.85 percent of total gifts.[12] Religious organizations have historically been the most popular charitable cause. Dollars increased 2

[4] Alison Stein Wellner, *Modest Signs of Rebound*, The Chronicle of Philanthropy (Vol. XVI, No. 18, June 24, 2004), p. 28.
[5] *Id.*
[6] *Id.*, p. 30.
[7] *Id.*, pp. 28, 30.
[8] *Id.*
[9] *Id.* p. 28
[10] *Id,* .p. 30.
[11] United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the Patriot Act), Pub. L. N. 107-56, 115 Stat. 272.
[12] Alison Stein Wellner, *Modest Signs of Rebound*, The Chronicle of Philanthropy (Vol. XVI, No. 18, June 24, 2004), p. 28.

percent over 2002, a level about equal to the 2.1 percent increase shown from 2001 to 2002.[13] Educational organizations experienced the greatest decrease among charitable sectors. Schools and universities attracted $30.6 billion, a decrease of 3 percent over prior year.[14] This decline was especially noteworthy following a 2 percent decline in the prior year.

Giving to religious and educational organizations were likely the most popular because of high donor contact and interaction. A 2001 Independent Sector study entitled Giving and Volunteering in the United States provides insight. Researchers contacted 4,216 adults age 21 or older to get details on their giving and volunteering patterns for the 2000 calendar year and to examine the link between volunteer contact and the volunteer's contribution.[15] They found that households engaged in volunteer work (46 percent) gave an average of $2,295 in 2000 compared to $1,009 contributed by non-volunteer households. Those who attended religious services regularly also gave more (41,869) than those who did not ($1,219).[16]

TABLE 1
GIVING USA 2004 SOURCES OF DONATIONS

Source	*Dollars (in Billions)*	*% of Total Giving*	*Real Increase from Prior Year (Before Inflation)*
Individuals	$179.36	74.5%	2.5%
Bequests	$21.6	9.0%	12.8%
Foundations	$26.3	10.9%	-2.5%
Corporations	$13.46	5.6%	4.2%

TABLE 2
GIVING USA 2004 RECIPIENTS OF DONATIONS

Area of Charitable Interest	*Amount (in Billions)*	*Percentage of All Gifts*	*Increase from Prior Year (After Inflation)*	*Area of Charitable Interest*
Religion	$86.39	35.9%	2%	Religion
Education	$31.59	13.1%	-3%	Education
Human Services	$18.89	7.8%	-1%	Human Services
Health	$20.89	8.7%	8.2%	Health
Arts, Culture and Humanities	$13.11	5.4%	4.9%	Arts, Culture and Humanities
Public Society/Benefit	$12.13	5.0%	2.3%	Public Society/Benefit
Environment/ Wildlife	$6.95	2.9%	3.1%	Environment/Wildlife
International	$5.3	2.2%	12.1%	International Affairs

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13 *Id.*
14 *Id.*
15 Independent Sector, Giving and Volunteering in the United States 2001, Key Findings, <www.independentsector.org/PDFs/GV01keyfind.pdf>.
16 *Id.*

Affairs				

B. The IRS 2000 Statistics of Income Bulletin

The IRS publishes an annual Data Book that includes a state-by-state extraction of data on charitable giving drawn from income tax returns of taxpayers who itemize.[17] The most current report, published in spring 2003, provides data from the 2001-tax year.[29] Americans who claimed itemized charitable deductions (34.33 percent of those who filed returns) gave $137.7 billion to charity in 2001.[30] Table 3 shows results for Alabama and the United States.

TABLE 3
ALABAMA AND US FIGURES FROM IRS STATISTICS OF INCOME BULLETIN 2001 TAX YEAR

State	*Number of Returns*	*Number of Itemized Deductions*	*Number of Charitable Deductions*	*Dollar Value of Charitable Deductions (in thousands)*
Alabama	1,892,976	575,608	522,804	$2,089,551
Total All States	**$130,977,219**	**44,961,551**	**39,430,635**	**$137,754,032**

C. The Boston College Social Welfare Institute Study

Researchers at the Boston College Social Welfare Research Institute have recently published a new projection of the intergenerational transfer of wealth to occur between 1998 and 2052. That study projects that the transfer will range from a low of $41 trillion to a high of $136 trillion, figures substantially higher than the frequently used $10.4 trillion figure developed in the 1990's by Robert Avery and Michael Rendall of Cornell.

The researchers based the simulation model on certain assumptions. Key assumptions forming the basis for these estimates were that:

1. The baseline for household wealth in 1998 was $32 trillion.

2. The growth rate of wealth for the study period will range from 2% (low estimate) to 4% (high estimate) and will occur at a steady rate (no recessions, no high growth years).

3. Household savings, spending over savings, and growth in wealth will occur in certain age bands.

A summary of the study can be found at www.bc.edu/bc_org/avp/gsas/swri/ in the article entitled "Millionaires and the Millennium: New Estimates of the Forthcoming Wealth Transfer and the Prospects for a Golden Age of Philanthropy."

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[17] Internal Revenue Service Data Book, Publication 55B, Table 22.

III. The Players in the Planning Process

The charitable planning team generally involves at least four participants: the donor, the donor's attorney, the donor's accountant, and the development officer from the nonprofit. In some instances, the team should also include the insurance agent, the financial planner, the real estate agent, or the trust officer that works with the donor. All of the participants are important to achieve the most effective gift plan. Without one of these participants, the gift may be effective for some purposes, but not for the goals of the more comprehensive plan.

A. Your Role

Your role is to facilitate and help form the gift. You develop the relationship with the donor, help the donor develop a vision of the gift's goals and results; and in some cases, lay out options. The first two are key; the third is best left to those experienced in planning. Most gifts require professional assistance to complete.

B. The Donor

The donor, of course, is a critical party. He is the one that supplies the charitable intent, the asset and the gift. The gift may originate in conversations between staff and the donor, or in response to a donor call after reading a newsletter or attending a seminar, or in response to questions raised by the donor's advisor in the planning process. If the conversation begins between the donor and development staff, encourage the donor to involve his advisor while keeping development staff involved in designing the purposes and uses of the gift.

C. The Donor's Advisors

- **Attorneys.** The attorney plays the most visible role in planning since she drafts the documents that create the gift. While the idea for the gift may originate with a discussion between the donor and the charity, the attorney should be involved for advice on how to achieve the stated goals, guide the selection of the gift form, and in most cases, draft the documents to implement the plan.

- **Certified Public Accountants.** The certified public accountant (CPA) provides the tax expertise for the donor's gift and may be the impetus for consideration of charitable- or tax-planning strategies. The donor's accountant also handles the tax reporting for the gift, including the annual income tax return (Form 1040), the gift tax return (Form 709), the estate tax return (Form 706) and the accompanying valuation form (Form 8283). Public accountants also specialize and may not have expertise in charitable planning.

- **Insurance Professionals.** The insurance agent, generally a certified life underwriter (CLU) or chartered financial consultant (ChFC), may have the longest relationship with the donor. Generally, clients purchase insurance

- early in life to provide economic protection for family members in the case of a catastrophe. The insurance agent's role may include family protection issues, estate-planning liquidity, and small business transfer issues. In the gift planning process, insurance professionals are often involved in providing wealth replacement insurance and frequently initiate the idea for a gift.

- **Financial Planners**. Financial planners are more frequently involved in gift planning as individuals seek one-stop planning and coordination of family financial needs. This field, however, is difficult to define for three reasons. The term "financial planner" is broad, describing a skill often possessed by accountants, trust officers, brokers, and insurance professionals. It is used in this context to refer to someone in the primary business of counseling clients on budgeting and other current planning, retirement planning, and estate planning issues with a focus on allocation of resources to meet specific financial goals.

- **Trust Officers.** The trust officer may have a relationship with several generations of family members, providing a unique perspective of the family's resources, needs, and long-term objectives. When families use banks to manage transfers of wealth, the trust officer learns about the strengths and weaknesses of each family member and the trust resources available to meet short-term and long-term needs.

- **Stockbrokers.** Stockbrokers are often the donor's primary source of investment advice; in these instances, the broker is an important member of the planning team. Appreciated publicly traded securities are the most common form of non-cash gift. The broker understands the donor's investment strategy and long-term goals; moreover, she can identify the most appropriate asset for the gift transaction. In fact, the broker may be in the best position to suggest a charitable gift.

- **Real Estate Agents and Brokers.** While rarely considered as part of the planning team, real estate agents are in an excellent position to identify client opportunities for making charitable gifts. The role of the real estate agent depends on the donor's assets. If the client's holdings consist largely of real estate, a real estate manager or broker involved in the donor's investment strategy should be included as part of the team.

IV. The Planning Process

A. A Barrier to Planning: Common Assumptions

Some of the difficulties in sorting the ethical issues in planning are based on assumptions made in planning. The most common assumptions are:

Assumption One: The individual wants to leave his or her entire estate to family. The planner should not assume that the client wants to leave the entire estate to a spouse, children, or other relatives. The client should be asked to quantify his goals for family members. More and more individuals – those with excessive wealth and those with more moderate estates – have specific dollar goals in mind.

Assumption Two: The individual is driven by tax avoidance. So much of what the client reads in *Forbes*, *The Wall Street Journal*, or even the local newspaper on estate planning focuses on tax avoidance or reduction. The planning professional also focuses on estate planning techniques and tax avoidance. The donor is focused on neither. Instead, he is concerned about personal needs, family needs and in many cases, charitable goals; he is not willing to sacrifice those goals merely to save taxes.

Assumption Three: The individual has fully thought through the issues that impact estate planning. Most have not. It is important to understand the perspective of the client involved in charitable planning. While the professionals involved consider the tax consequences and alternatives, the donor is dealing with more personal issues. The donor must first ensure that he or she will be able to maintain or improve a lifestyle. Next, the donor must ensure that he or she can provide for family, both during life and at death. Finally, the donor may want to impact or benefit those charitable organizations that were priorities during life. If the donor has not taken the time to articulate or quantify these concerns and goals, it is difficult to make decisions in the planning process.

B. A Checklist for Goal Setting

Many clients have difficulty establishing goals for planning. These individuals may not have taken the time to person goals for lifetime needs or for the disposition of wealth. They often need help in working through the process. The worksheet at Appendix A is an example of a simple form used to elicit this information. Common planning goals may include:

- **Providing for sufficient assets for spouse and family and addressing special needs**.

- **Providing for children**. This requires a discussion of the amount or nature of the property to be left to the child, and the form of the gift. The client should review whether the child is capable of financial asset management or if an advisor or trustee should be appointed.

- **Providing for grandchildren.** This also requires a discussion of how much and in what fashion. Can they handle financial asset management? Would a professional trustee be of benefit?

- **Providing for special educational, rehabilitation, medical or remedial provisions that should be made for one or more dependents**.

- **Providing for the care of extended family members**. Do you have any special concerns or needs that should be addressed in providing for your parents? Are there any other extended family members (or siblings?) that require special help?

- **Creating a way to maintain control or allow for flexibility**. How important is the ability to provide direction and meet needs?

- **Establishing family values and philanthropic goals that are important**.

- **Support specific charities that the client has supported during his or her lifetime**.

C. Helping the Professional and Donor Discuss Charitable Objectives

Many professionals are not comfortable raising the issue of charitable giving. These questions are designed to make that process easier. These questions may be incorporated into an intake questionnaire to identify charitable objectives. Encourage the professionals you work with to raise these questions during the planning process.

- *Do you have charitable organizations that you currently support on an annual basis?*

- *Do you want to include a gift to any of these organizations or other charitable organizations as a part of your estate plan?*

- *If there were a way to make a gift to charity largely out of federal estate tax dollars, would you be interested in exploring options to accomplish that goal?*

The key is to ask the questions to allow the client to express charitable giving in terms of a priority. If you raise the issue and the client is not interested, move on. If you raise the issue and the client does express an interest, then there is an opportunity to integrate charitable giving in the overall estate plan. The chart at Appendix G provides ideas for objective-based planning for donors.

D. The Age Perspective

Income needs drive many of the decisions on charitable gift planning. While there are always exceptions, the chart below reflects patterns of interest.

Age	**Goals**
25-40	Generate enough income to survive!
40-55	Build assets—gather and invest—long-term investment horizon.
55-65	Position for retirement—shorter-term investment horizon.
65—on	Live on income—preserve principal—short-term, conservative investment horizon.

V. Basic Gift Options

A. Current Outright Gifts (to Increase Major Giving)

Almost any type of property owned by the donor may be the subject of an outright gift. These gifts may consist of a transfer of a 100 percent interest in the property, or in some cases, a partial interest in the property.

1. Publicly Traded Securities

Gifts of appreciated securities – stocks, bonds, and mutual funds – are one of the most common forms of planned gifts. There are two reasons. First, a large part of the population now owns securities and most of these securities appreciated significantly throughout the 1990s. Second, gifts of appreciated property generate two tax benefits: a charitable deduction for its market value and avoidance of tax on the appreciation.

a. Publicly Traded Stocks

Publicly traded stock is the most common non-cash gift made to a nonprofit because it is widely held, easily valued, and quickly reduced to cash. According to a survey conducted April 6-8, 2001 by The Gallup Organization, 62 percent of the population owned individual stock holdings, stock mutual funds, or individual or mutual fund holdings in a self-directed 401(k) or IRA.[18] This compares to 8 percent who held stock investments in the early 1950s.[19]

b. Publicly Traded Bonds

Bonds are used as charitable gifts less often than stock, because generally they do not have generally have the underlying appreciation found in stocks. Most bonds are purchased at face value and mature at face value. The market value of the bond fluctuates during its term, depending upon prevailing interest rates. Sometimes, donors own original issue bonds that they will consider as a potential gift asset. Original issue bonds are ordinary income property.[20]

c. Mutual Funds

A mutual fund is an open-end investment company; a share of a mutual fund represents a fractional ownership in an underlying group or "basket" of securities. Mutual funds have become extremely popular throughout the 1980s and 1990s, as investors have had access to thousands of funds through brokerage firms, direct mutual fund access, and employee benefit plans. Mutual fund shares trade only once a day, at the end of the day. Gifts of mutual fund shares are valued at the public redemption value (the net asset value of

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[18] Citing The Gallup Organization, "Stock Market," <www.gallup.com/poll/indicators/indstock_mkt.asp>.

[19] "As stocks drop, Americans put off retiring," The Christian Science Monitor (March 29,2001), <www.csmonitor.com/durable/2001/03/29/fp2s1-csm.shtml>.

[20] See an explanation of the percentage limitation rules for gifts of ordinary income property in Chapter 8.

the fund) on the date of gift. Net asset value is determined by valuing all securities in the fund at the end of the day, reducing that value by expenses and dividing that figure by the number of shares outstanding.[21] This price is published in the *Wall Street Journal*, on various websites, and other written or electronic journals that track the securities market.[22]

2. Privately Traded Securities

Privately traded securities, also referred to as closely held securities, are defined here as securities for which there is no public market on a stock exchange, over-the-counter market or otherwise.[23] Shares of closely held securities are popular gifts, because many individuals create and operate small businesses, and these businesses represent the donor's single largest asset. A 1994 survey conducted by the Bureau of the Census identified 4.8 million employer businesses.[24] These businesses may be as simple as a consulting firm with a single employee or as complex as a multi million-dollar international construction company. The one thing they have in common is that they are held by a limited number of owners and the company stock is not traded in public markets.

When a donor makes a gift of non-publicly traded securities in excess of $5,000, she must attach Form 8283 with an appraisal summary that meets the substantiation requirements of the Internal Revenue Code.[25] When the gift value exceeds $10,000, a full qualified appraisal must be attached to the return.[26] Many valuation and accounting firms specialize in providing these appraisals.

3. Partnership Interests

Partnerships may carry on family businesses, real estate for multiple owners, tax shelters, and even traditional investment assets for a family or investment club. The transferability of a partnership interest is governed by the partnership agreement. In most cases, the interests are transferable, but the planner should check the governing documents before proceeding to make a transfer. Partnership interests may be general or limited. A general partner is responsible for making the decisions about operation of the partnership, but it is also fully liable for the partnership's debts and liabilities. A limited partner generally is not considered to materially participate in the daily business of the partnership, and has limited liability for its debts and liabilities; this liability is limited by the size of the contribution or ownership of the limited partner.

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[21] Reg. § 20.2031-8(b)(1).
[22] Websites that report prices of mutual funds include <www.morningstar.com>, <http://finance.yahoo.com>.
[23] Reg. § 25.2512-2(b), distinguishing valuation methods for securities that trade on a public market and those that do not.
[24] Bureau of the Census, "Census Bureau Says Percent of Employer Businesses Owned by Women Continues to increase," (April 8, 1997), <www.census.gov/Press-Release/cb97-57.html>.
[25] The substantiation requirements are found in Reg. § 1.170A-13 and are discussed in detail in Chapter 8 (for income tax requirements) and Chapter 9 (for estate and gift tax requirements).
[26] Reg. § 1.170A-13(c)(2)(ii)(B)(1).

4. Tangible Personal Property

Tangible personal property is defined as an asset that can be touched, handled, or moved by an individual (as opposed to intangible assets such as ownership in a company or debt, that is represented in a certificate, contract, or electronic form). The most common tangible personal property assets include art, furniture, coin and stamp collections, livestock, jewelry, equipment, cars, boats, clothes, or any similar asset or collectible owned by a donor.

The charitable deduction for a gift of tangible personal property is affected by how the gift will be used by the nonprofit, i.e., whether it will be used in meeting the charity's mission or whether it will be sold on receipt. Pursuant to this "related use" rule, the donor may deduct the full market value of a contribution of tangible personal property related to the use of the organization, but is limited to the basis of the asset for an unrelated use contribution.[27] When the charitable deduction for tangible personal property is unrelated to the charity's mission, the value of long-term appreciated property must be reduced by the amount that would have been the donor's long-term capital gain in the property had it been sold; essentially, the rule limits the donor's deduction to his basis.[28]

An asset has a related use if it is given to the organization for use in carrying out its mission and the intent is for it to be used for that purpose. Related use gifts may include a gift of a painting to a museum, a gift of a heart monitor to a hospital, or a gift of a computer to a school. If the donor contributes property for the charity for sale, the gift will not be considered related use, even if the gift would have been if the nonprofit had retained it. So, for example, gifts donated for auction are considered to be unrelated use items since the gifts are sold and are not used by the nonprofit. Likewise, a gift contributed to discharge a capital campaign pledge is an unrelated use gift.

5. Real Estate

Real estate is a logical gift choice for many donors because it is one of the most widely held assets. A donor may own a residence, one or more vacation homes, commercial property, undivided real property interest, rental property, or business property. Over time, the donor may no longer need or use the property, and it may produce little or no income. Worse, it may have costs associated with upkeep, such as insurance, property taxes, structural maintenance, and grounds maintenance. Therefore, transfer of the real property to the nonprofit may not diminish the donor's income and may actually improve his cash flow if expenses are avoided.

Real estate is one of the most difficult and expensive gifts to make because of potential liability for environmental damage and the legal costs associated with title policies, deeds, appraisals, and inspection. Charities may also be reluctant to accept real estate because of the costs to maintain the property and the difficulty of selling the property in a timely manner. In fact, some charities refuse to accept any gifts of real property because they do not have the staff to analyze the transaction and follow through with the property's maintenance and sale.

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[27] IRC § 170(e)(1)(B)(i); Reg. § 1.170A-4(b)(3)(i).
[28] IRC § 170(e)(1)(B).

Most gifts of real estate require the services of a qualified appraiser since the donor must obtain a qualified appraisal for gifts of real property in excess of $5,000.[29] Valuation of gifts of real property can be complicated. Factors that affect value include the strength of the real estate market, the location of the property, restrictions or easements associated with the property, income generated by the property, the ownership structure, and the potential for environmental liability. Normally, the property is valued at its highest and best use (without regard to the way the donor has used the property), unless there are conditions that make highest and best use remote, speculative and conjectural.[30] The IRS publishes specific guidelines on how to use market data to appraise undeveloped real estate for income, estate, and gift tax purposes.[31]

Most charities will not accept gifts of real property without a written assessment asserting that the property is free from environmental damage. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) enacted in December 1980 created a strict liability structure for "responsible parties" in the chain of title of environmentally damaged property. Under the statute, the liability for the cost of cleaning up the property exists without regard to the owner's knowledge of or participation in the damaging activity.

6. Savings Bonds

There are three types of savings bonds issued by the United States Government: Patriot Bonds (formerly EE Bonds), Series I Bonds, and Series HH/H Bonds.
Patriot Bonds are savings bonds issued at a discount by the U.S. Government.[32] Purchasers can elect to report the accrued interest on the bonds annually or to defer recognizing income until redemption; most chose to defer. When holders of Series EE/E Bonds with deferred income contribute the bonds to a charity during life, the gift is valued at the full fair market value of the bond (rather than the discounted value paid for the bond), but the donor must report the accrued interest (as ordinary income) in the year of the gift.[33] Conceptually, this is the opposite tax result from a gift of appreciated stock for which the donor receives a charitable deduction equal to market value and avoids the capital gains tax on the appreciation.[34] A donor would be better off to simply make a gift of cash.

Patriot Bonds cannot be reregistered in the charity's name during life without triggering the tax. The only way to avoid recognition of ordinary income on these bonds is to transfer them to charity through a specific bequest under the will (or, if the bonds are held

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[29] Reg. § 1.170A-13(b)(3)(i). See Chapter 8 for more information about qualified appraisals.
[30] Rev. Proc 79-24, 1979-1C.B. 565, Section 3.
[31] Rev. Proc. 79-24, 1979-1 C.B. 565.
[32] For savings bonds redemption values, six month earnings as an annual yield, and yield from issue date for Series EE/E bonds can be found at www.publicdebt.treas.gov/sav/savreport.htm>>.
[33] Reg. § 1.170A-4(a)(3).
[34] Actually, the result is generally much worse, since the gain avoided on gifts of appreciated securities is long-term capital gain, while the income recognized on disposition of E or EE Bonds is taxed as ordinary income.

in a revocable trust, through a testamentary disposition to charity in that trust).[35] A specific bequest of the bonds will shift the accrued income to charity and avoid taxation as income in respect of a decedent in the donor's estate.[36] This is not possible when bonds are owned jointly with right of survivorship, since these bonds will pass to the survivor and will not be subject to the terms of the will. The survivor of the two interests may leave the bonds to charity under will.

Series I Bonds are the most recent addition to the savings bond options. These bonds, first offered in September, 1998, are sold at face value and pay interest that is adjusted twice a year to reflect increases in the Consumer Price Index for all Urban Consumers (CPI-U). Interest is compounded semi-annually. The bonds have a thirty year maximum, but may be redeemed for cash after a six-month holding period. The interest on the bonds is deferred for federal tax purposes during the life of the bond. The Bonds are exempt from state and local income taxes. The gain in these bonds is taxed as ordinary income in the year of maturity, redemption, or disposition. Therefore, these assets make poor gifts for charity during life, but make excellent gifts to charity under will.

Series HH/H Bonds are savings bonds issued at face value that pay annual interest. When donors contribute Series HH/H bonds to charity during life, the gift is valued at the full fair market value of the bond. If, however, the HH/H bonds have been converted from EE/E bonds (and the interest was deferred, rather than paid, on conversion), the gift to charity will trigger the deferred ordinary income accrued during the period the donor owned the EE/E bonds.[37]

B. Gifts that Pay Income

Split interest gifts – charitable remainder trusts, charitable gift annuities, pooled income funds, and charitable lead trusts –divide income and principal benefits between charitable and non-charitable beneficiaries. Even though these gifts represent only a small percentage of all charitable gifts each year, they intrigue donors and professional advisors by offering flexibility in planning and multiple tax benefits. Ultimately, split interest gifts are simply options that enhance estate and charitable planning; they are not tax or investment products. Sometimes, a simple outright gift of the right asset may do a better job of meeting donor goals.

1. Charitable Remainder Trusts

Broadly described, a charitable remainder trust is an irrevocable trust that benefits the donor or other individuals named by the donor, for a term of years or lives. Upon termination, remaining assets pass to one or more qualified charities. The Internal Revenue Code defines a charitable remainder trust in a more technical way.[38]

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[35] See Ltr. Rul. 8010082 (December 13, 1979) for further information on EE/H bonds. Also see Ltr. Rul. 9507008, where IRS ruled that savings bonds in a revocable trust with testamentary provisions used to discharge pecuniary bequest to charity triggered recognition of income in respect of decedent in the trust.
[36] IRC § 691(a)(1).
[37] Ltr. Rul. 8010082.
[38] IRC § 664, Reg. § 1.664-1(a)(1)(i).

- It is an irrevocable trust created by a donor;
- To which the donor contributes property;
- Which provides for a specified distribution, at least annually, to one or more beneficiaries, at least one of which is not a charity. This annual distribution is measured as a sum certain (an annuity trust) or a fixed percentage of the market value of the trust (a unitrust), which cannot be less than 5 percent or greater than 50 percent of the trust's assets at the time measured. The trust can make no other distribution to non-charitable beneficiaries.);[39]
- Which continues for a period of time measured by a life (or lives), a specific number of years (not more than 20), or a combination the two methods;
- Which meets the definition of a charitable remainder trust and operates exclusively as a charitable remainder trust from the date of creation;[40]
- Which has at least a 10 percent anticipated charitable remainder at the time of creation (or at the time of any addition to the trust, if permitted);
- Which has less than a 5 percent chance that the corpus will be depleted when the trust terminates to the charitable beneficiary; and
- Which pays the property in the trust at termination to, or for the benefit of, one or more qualified charitable organizations.

There are two basic forms of charitable remainder trusts: the annuity trust and the unitrust. A charitable remainder annuity trust pays a fixed percentage of the initial market value of the trust to one or more non-charitable beneficiaries on an annual basis. This annuity rate is fixed at the creation of the trust and does not change. Additional property may not be added to the trust. The donor selects the distribution amount at the time of creation of the trust. This amount can be no less than 5% and may be no higher than 50%. The calculated charitable remainder at the time of creation of the trust must be 10% or greater.

A charitable remainder unitrust pays a fixed percentage of its market value (determined annually) to the non-charitable beneficiary. The annual payment percentage may not be less than 5% or greater than 50%. At the time the trust is created and at the time of each addition to the trust the calculated charitable remainder must be 10% or greater.

2. Charitable Gift Annuities

A charitable gift annuity operates much like an annuity issued by an insurance company. The donor pays the charity a specific sum of money and in return receives a guaranteed annuity contract for life. There are two major differences between commercial annuities and charitable gift annuities.

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[39] A trust must be exclusively an annuity trust or a unitrust to qualify as a charitable remainder trust.
[40] Reg. § 1.664-1(a)(4).

1. Commercial annuities are issued by regulated insurance companies. A charitable gift annuity is issued by a charity, and may or may not be regulated by state and federal authorities.
2. A commercial annuity is a straight business transaction involving an annuity contract. The charitable gift annuity is part annuity and part gift to charity.

Charitable gift annuities are the oldest form of split interest gift. Churches originally issued gift annuities for members of the parish or congregation to allow parishioners to make a gift to the church and receive a fixed income through old age. The first known gift annuity was issued by the American Bible Society in 1843.[41] Many of the country's older schools, hospitals, and national church organizations have offered charitable gift annuities successfully for years. Now smaller nonprofits are clamoring to add this gift option, so their donors do not migrate to other charities to make this kind of gift.

It is easy to understand the popularity of charitable gift annuities as a planned giving option.

- Charitable *gift annuities are easy for charities to explain and donors to understand.*
- The *gift provides the donor with a guaranteed, specific income stream*. Often this income stream is higher than the donor can receive from a certificate of deposit, a U.S. Treasury bond, or other investment.
- The *transaction is part gift*, meaning that in creating a charitable gift annuity the donor also makes a gift to a favorite charity.
- The *gift generates a charitable income tax deduction for the donor* in the year in which the gift is made.[42]
- The *transaction creates beneficial capital gain treatment* for the donor who contributes appreciated property.
- *Creating the gift is simple*, requiring a one or two-page governing instrument supplied by the charity. In other words, there are no legal costs associated with having an attorney prepare documents.

Most charities use the rates set by the American Council on Gift Annuities. Sample rates effective since July 1, 2004 are set out below:

TABLE 4
SAMPLE SINGLE LIFE CHARITABLE GIFT ANNUITY RATES
RECOMMENDED BY THE AMERICAN COUNCIL ON GIFT ANNUITIES

Donor's Age	Annuity Rate
50	5.3%
60	5.7%
70	6.5%
80	8.0%
90+	11.3%

[41] Minton, Frank, *Charitable Gift Annuities The Complete Resource Manual* (Planned Giving Services: 1999), p. A-1.
[42] Gift annuities involve an outright gift to charity deductible under IRC § 170(c). The contract element of the life interest is addressed in IRC §§ 501(m)(3)(E), -(5),514(c)(5).

TABLE 5
SAMPLING OF DEDUCTION AVAILABLE TO DONORS AT VARIOUS AGES USING JULY 1, 2004 ACGA ANNUITY PAYMENT RATES;
TABLE ASSUMES: GIFT OF $10,000, SINGLE LIFE, QUARTERLY PAYMENTS (January 2005 4.6% CFMR)

Age	Annuity Payment Rate	Annuity Payment Amount	Charitable Deduction
50	5.3%	$530	$1,949.90
60	5.7%	$570	$2,844.40
70	6.5%	$650	$3,777.30
80	8.0%	$800	$4,802.60
90	11.3%	$1,130	$5,671.60

3. Pooled Income Funds

Pooled income funds are one of the least-used forms of charitable gifts. This is largely because the gift is difficult to explain to donors and the income stream generated by a pooled income fund seems meager in comparison to a charitable gift annuity. A pooled income is a separate tax entity, generally a trust, created by a charity that allows donors to contribute assets and receive a life income from units of the fund. The pooled income fund is often called the poor man's charitable remainder trust. The two gifts are similar only in the sense that each allows the donor to retain an income stream from the gift made to charity. Beyond that, these options do not have much in common. The methods of making the gift, the income tax treatment of the non-charitable beneficiary's annual payment, and the amount passing to charity at termination have significant differences.

Charities find the pooled income fund is an attractive gift vehicle for the following reasons:

- The *charity can pool an unlimited number of gifts* and more easily accommodate small split-income gifts.
- The *charity controls the funds*, including the trustee and investment management.
- The *charity receives the full amount of the gift* and takes no risk that the principal will be exhausted (since the donors are limited to income only). Compare this to a charitable gift annuity that is designed to deliver only 50 percent of the amount contributed (the remainder representing the portion used to make the annuity payments to the donor) or a charitable remainder annuity trust that may be diminished or consumed while paying the income beneficiary.
- The *charity may maintain multiple pooled income funds* with varied investment styles to appeal to different types of donors, some preferring stable, higher income funds and others growth over time.[43]

Pooled income funds are likewise attractive to many donors. This is because:

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[43] Reg. §1.642(c)-5(b)(3).

- The *donor receives all of the income from the gift for life* and need not be concerned about annuity amounts or formula unitrust amounts that may be more or less than the income generated. Many older donors prefer to spend only income from personal investments.
- The *donor can make small gifts* or a series of gifts, without incurring legal costs.
- The *donor receives a charitable deduction* for the value of the gift, reduced by the value of the income interest expected from the gift.
- The *donor can contributed long-term capital gain property to the fund and avoid tax on the appreciation.*

The Internal Revenue Code describes a pooled income fund in the following terms:[44]

- It is a *trust created by a qualified charity* that pools contributions from donors;
- That *receives irrevocable transfers of property* from donors;
- That *identifies units of the fund, based on the market value of the contributed property,* that are held for the benefit of the named beneficiary or beneficiaries;
- That *distributes income from the fund to the named beneficiary or beneficiaries for life; and*
- *At the death of the named beneficiary or beneficiaries of the income interest, liquidates the units and distributes the assets to the charitable organization.*

C. Deferred Gifts

Deferred gifts, as defined here, are gifts that are not completed until the date of death of the donor. These gifts are put in place during life but are revocable, which means that the gift may be changed or altered before death by the action of the donor. Deferred gifts are popular because they allow the donor to continue to use the property during life.

1. Bequests

A bequest, in the context of charitable giving, is a gift made to charity under a will or a will substitute such as a revocable trust.[45] Bequests are a popular method of giving, representing $16.33 billion of the $212 billion contributed to charity in 2001.

Form	Example
A specific dollar amount	I leave XYZ Charity $10,000
A percentage of the total estate	I give XYZ Charity property equal to 10% of my gross estate
A percentage of the residue	After distribution of the specific items (to other

[44] IRC§ 642(c)(5).

[45] Some clients have revocable trusts, which are grantor trusts that hold assets for the donor, that are designed as will substitutes to avoid probate proceedings and the public review that is a part of probate. (Documents filed for probate are available to the public on request.) These revocable trusts provide for distribution of the owner's assets at death.

	beneficiaries), I leave XYZ Charity, A Charity and B Charity equal amounts (or one-third) of the residue of my estate.
A specific class of property	I leave XYZ Charity all of my common stocks
A specific asset	I leave XYZ Charity my home
All of the remainder	I give XYZ all of the property remaining after paying debts, expenses, and all specific bequests.
A contingent bequest	In the event that my wife does not survive me, I give the property set aside for my wife to XYZ Charity.
A formula distribution	I leave XYZ an amount equal to ten times the size of the average gift made to XYZ institution over the last three years of my life.

2. Insurance Beneficiary Designations

Many donors choose to name charities as beneficiary of their life insurance policies. This designation may be primary or secondary. If, at the death of the insured owner, the proceeds are transferred to charity, those proceeds qualify for a charitable deduction.

3. Retirement Plan Beneficiary Designations

Retirement accounts, which include pension plans, profit sharing plans, stock bonus plans, Keogh Plans, 401(k) plans and Individual Retirement Accounts (IRAs), generate a number of tax consequences on the death of the owner. These tax consequences make qualified retirement assets and IRAs very cost effective as testamentary charitable giving vehicles.

Retirement plans have lifetime income tax advantages that promotes savings for retirement purposes. The tax advantages of retirement and IRA plans work to defer, rather than to eliminate, taxes. The early death of the retirement plan owner accelerates those taxes at the same time that estate taxes are due. The combination of taxes can create an ugly result.

Retirement plan assets are taxed at several levels:

- Income taxes are owned on assets on which the decedent would have paid income if alive. The tax may run up to 38.6% at the 2002 federal tax rate in addition to state taxes that are due.

    - The full market value of the retirement plan assets will be taxed with estate tax in the owner's estate. The top rate for this tax is 50% in 2002.
- Finally, generation skipping tax may apply if the owner directs that the plan assets be distributed to a beneficiary two or more generations below the owner. This tax is assessed at a flat rate equal to the maximum estate tax rate (50% in 2002).

VI. Talking to Donors

A. The Magic Conversation

Planned gifts – like major gifts – are built on relationships, not tax incentives. And relationships are built on knowledge of the donor's motivations, goals, family and values. These relationships are furthered through conversation with the donor. It's easy to have that conversation. Try asking the following series of questions:

1. How did you first get involved with XYZ Charity? (When did you make your first gift and why?)
2. What is the most important element of our program to you?
3. Look out ten to twenty years. What is the greatest challenge that we face as a charitable organization? What is your greatest priority for us at that time?
4. What can you do to help us address that concern (or achieve that goal)?

This conversation may take place over one or two visits, or one or two years. Move through the questions at a comfortable pace, and listen to the donor's responses. You will learn more through this free form exchange of information than in any other way. You'll hear stories that will energize you in your role as a development officer.

B. Recording What You Learn

Take good notes, and record the donor's comments in your data system. Once the donor has shared this information with your charity, they will assume that other development officers that follow will have that knowledge. Information that free ranges in your head is not easily accessible.

C. Building on Knowledge

Once you've identified the donor's interests and focuses, build on that. Look for clippings related to the donor's interests. Invite them to events that build that interest and involve them personally in that area of your charity. Probe the donor to learn more about specific interests and share with them ways to advance those objectives. It may be to endow a scholarship fund, or a chair for a particular charitable program. You may find creative ways to meet the donor's goals within the context of a larger campaign or program.

D. Closing Planned Gifts as a Major Gift Officer

When does the opportunity to introduce planned gifts arise? In many ways. Almost always, these conversations focus on personal goals and objectives. Planned gifts are most effective when integrated in personal financial and estate planning, and combine personal and charitable goals.

1. **Ask all five-year plus donors, and major donors, to remember XYZ Charity in their will or estate plan.** In donor surveys, potential donors have indicated they had not included charities in their will because they were not asked to do so. Your good donors should be given the courtesy of a personal ask. Begin the request by thanking them for their ongoing support, assuring them they have played an important role in keeping your charity operating effectively, and then asking them to make sure their gift continues perpetually. The easiest way to ensure this is to endow the gift through their will or estate plan.

2. **Listen carefully to personal needs that may be met through planned gifts.** For example:

   - My income has been cut in half! My certificate of deposit is due to be renewed, and the interest rate is less than 2%!
   - Income from my stocks and bonds has dropped significantly over the last two years. I don't enough income to continue to make annual gifts.
   - I wish I could sell my stocks – but I hate to add the capital gains tax to the other taxes I pay now.
   - I'm worried about providing for my parents. I wish there were a way to get more income to them without transferring my assets.
   - I've got a child with special disabilities who qualifies for SSI. It's hard to know how to make sure they will always have resources.

3. **Listen carefully for major financial transaction indicators that may be leveraged through a charitable gift**. For example.

   - My brother and I are going to sell land we inherited from our parents. I'm tired of paying the taxes and dealing with trash dumped on the land. Do you know any brokers?
   - I've decided not to pass the family business to my children. I think it will be better to sell it now, while it still has substantive value.
   - I'm worried about retirement. How will I ever create enough income, and ensure that income stream will continue through

retirement? I think I'll sell my financial assets and purchase tax exempt bonds.

VII. Final Thoughts

Planned giving is a natural extension of your current relationship with the donor. Major gifts officers must learn to recognize opportunities, and to move opportunities forward, if they are to further those relationships. The good news, building that relationship and introducing planned gift concepts is as easy as listening, taking notes, and using the charity's resources to develop ideas that will add value to the donor's planning.

APPENDIX A
GOAL SETTING WORKSHEET

Setting goals for care of family and distribution of funds is important. Use this chart to list your goals, and indicate the dollar figure required to fund those goals.

Priority	Goal	$$ Required
	Provide for personal lifestyle.	$
	Provide for family care and lifestyle.	$
	Provide for assets for children. Note: determine if that gift should be outright or in trust.	$
	Provide for assets for grandchildren.	$
	Provide for elderly parents or family.	$
	Provide for family members with disabilities or other special medical needs.	$
	Provide for charities supported during life.	$
	Provide for the U. S. Government's programs and activities through a gift to the Internal Revenue Service	$
	Other:	$
		$
		$
		$
	TOTAL	$