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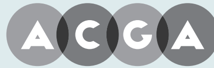

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Charitable Remainder Trust for Retiring Business Owners

BY RICK MILLS

Millions of baby boomers who owned businesses entered the pandemic having already reached retirement age. For many, the headache of running a business during a pandemic, the labor and supply chain chaos that followed, the inability to travel and spend time with children and grandchildren, and the constant reminders of mortality led inexorably to a single conclusion: It is time to retire. Since the height of the pandemic, asset prices have risen sharply, leading many business owners to believe that now is also the time to cash out.

Rick Mills

All of this is playing out at a time when the Biden administration has proposed a substantial increase in the capital gains tax and the Federal Reserve has announced future measures to combat inflation, including higher interest rates. For charitably inclined business owners pondering the prospect of retirement and the sale of a business, these events present significant charitable gift planning opportunities, particu-

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Charitable Remainder Trust Essentials

BY STEPHANIE C. BUCKLEY

This article was written for Wells Fargo Private Bank and provided courtesy of Stephanie Buckley, philanthropic services national leader at Wells Fargo Private Bank.

Charitable remainder trusts (CRTs) are typically a staple on any planned giving menu. They are a useful tool for donors who own highly appreciated assets and are seeking a way to sell such assets while addressing goals, such as minimizing capital gains tax, receiving an income stream for a period of time,

Stephanie C. Buckley

and also benefitting one or more charitable organizations. There are several nuances to CRTs and if you do not have the opportunity to work with them regularly, it is easy to forget some of them. This article summarizes CRTs for those new to planned giving or those seeking a refresher on the topic.

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larly opportunities involving the use of a Charitable Remainder Trust (CRT).

These opportunities are not just available to the wealthiest of business owners. A recent article in the Wall Street Journal highlighted the fact that many business owners with moderate income planning to sell their businesses face a grim prospect under the current Biden capital gains tax rate proposal. “They usually make less than $1 million, but capital gains from the sale of a property or business pushes them over that threshold for one year only,” the article states. “Under the Biden plan, with some exceptions, they would be taxed at the same top rate as Jeff Bezos if he were to sell Amazon.com stock.”[1]

Most nonprofits have a long list of such donors, Baby Boomers who own a business and will be retiring in the next five years. If the Biden capital gains tax increase becomes law, these donors will face, at the time of a business sale, a rate increase from 23.8 percent, for those earning over $1 million, to 43.4 percent, including a 3.8 percent Net Investment Tax.[2] In total, the business owner is at risk of losing nearly half of her gain to the federal government even before considering state income taxes. Now is the time to engage and educate those donors. Many businesses are sold by owners who, naturally, are not ready to retire, but the retiring owner is the focus here for charitable gift planners. The retiring owner faces a steep tax in a single year, is typically looking for retirement income, and is not too young to take advantage of the life expectancy requirements of a CRT.

Charitable gift planners should impress upon such donors that the key time to consult with an advisor for charitable giving options is before negotiating the sale of a business. As in most areas of tax planning, timing is everything and the options available to donors differ dramatically depending on where in the sales process the business owner finds himself. This is crucial because sales can move quickly, especially in the recent market. Even the most charitably inclined donor can forget about charitable giving during the rush to the closing table and the many business and legal issues to consider at that time.

There are many technical requirements facing the charitable gift planner when transferring a business interest to a CRT, many of which are outside the scope of this short article. The following is a brief discussion of some of the issues to be considered. The first factor to consider at the outset is timing. Generally, the sale of a business or of business assets cannot be part of a so-called “pre-arranged sale.”[3] The Internal Revenue Service will treat such a prearranged sale as a “step transaction,” which is fatal to the charitable gift plan. The business owner will be treated as the seller instead of the CRT and will not have use of the assets donated to the CRT to pay the tax.

While the rules are complex, the bright-line rule to avoid is a donation to the CRT after a binding agreement to sell the company or its assets has been executed.[4] For this reason, a donor counseled to consider a gift to a CRT as part of the sale of his business will find his menu of options shortened once he has a binding asset or stock purchase agreement. The business owner can execute a nonbinding letter of intent, general speaking, but the trustee of the CRT must be free to walk away from the transaction to avoid treatment of the transaction as a pre-arranged sale.

In the typical business sale involving a CRT, the business owner gives a portion of her interest in the business to the CRT before a sale to a third-party and claims an income tax deduction in that year for the donation. When the business is sold, the CRT does not pay taxes on the difference between the sales price and the business owner’s basis, which is typically very little, especially if the business was built from the ground up by the business owner. The tax on that appreciation is completely avoided. The business owner retains an income stream for herself for her retirement, or her family, and the charitable beneficiary receives the remainder interest at the time of the death of the business owner or spouse.

This basic model can be altered by three major factors: (1) whether the business is a sole proprietorship, a C corporation, or a pass-through entity like an S Corporation or a Limited Liability Company (LLC), (2) whether

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What is a CRT?

A CRT is a tax-exempt trust under Internal Revenue Code (IRC) §664 and accompanying Treasury Regulations. Because this type of trust is tax exempt, assets transferred into a CRT can be sold without incurring any capital gains taxes at the time of sale. The trust's tax-exempt status allows the full value of sale proceeds, minus any sales costs, to be reinvested to pay an income stream to one or more non-charitable beneficiaries. A CRT is required to pay at least one non-charitable beneficiary income for one or more lifetimes, a fixed term of up to 20 years, or some combination of the two. At the termination of the trust any remaining assets are transferred to one or more charitable organizations. Because the trust remainder is given to charity, the donor can be entitled to a charitable income tax deduction.

B-I-C Benefits

You may have heard about the "B-I-C" benefits of CRTs. The BIC mnemonic is an easy way to recall the general benefits of a CRT. The "B" represents the bypass of capital gain allowed because of the CRT's tax-exempt status.[1] The "I" is for the resulting increased income that is paid from the CRT to one or more non-charitable beneficiaries and the "C" is the charitable deduction that is allowed to the donor who creates a qualified CRT. Of course, while these benefits apply to most donors creating a CRT, each CRT is different, and all of these benefits may not apply in every scenario. Because each scenario will be different, it is important for the donor's own personal income tax advisors confirm all available benefits and how such benefits may apply to the donor's specific situation.

CRT Payouts and Charitable Deduction

As stated above, a CRT is required to make distributions at least annually to one or more non-charitable beneficiaries for the duration of the trust. The CRT distribution will be either a fixed amount from a charitable remainder annuity trust (CRAT) or a variable amount from a charitable remainder unitrust (CRUT). The fixed payment from a CRAT is determined by multiplying the selected payout rate by the initial funding amount of the CRAT. That payment will remain the same for the duration of the CRAT no matter what happens to the value of CRAT assets. On the other hand, CRUT payments will vary each year because the unitrust amount is (generally) calculated by multiplying the selected payout rate by the fair market value of the trust assets determined at some point during each tax year. Because the value of CRUT assets will increase or decrease, so will the total annual CRUT distribution amount. While a distribution is required at least annually, the unitrust amount can also be paid in monthly, quarterly, or semi-annual installments.

The selected annual payout percent of the CRAT or CRUT is chosen by the donor but must be a minimum of 5 percent and a maximum of 50 percent. The payout for a CRAT can also be stated as a dollar amount instead of a percentage. The selected payout rate will affect the amount of the donor's charitable deduction. A higher selected payout rate means less will be left for charity at the trust's termination, resulting in a lower charitable deduction. Further, regardless of the payout rate chosen, the charitable deduction must be at least 10 percent of the funding amount. For CRATs that pay the annuity amount over the lifetime of one or more individuals, there is an additional 5 percent probability test that says the trust fails to qualify as a CRAT if there is a 5 percent or greater chance the trust could be exhausted at its termination. This is a very stringent requirement that is difficult to satisfy when the charitable §7520 (often referred to as the charitable Applicable Federal Rate) rate is low.[2]

While there is only one payout option for a CRAT, a CRUT has four different types of payouts available. The most common is the straight (or standard) unitrust that pays a set percentage amount as described above. Another type is the net income CRUT (NICRUT) which pays out the lesser of net income or a standard unitrust amount percentage. The third type is a net income with makeup CRUT (NIMCRUT), which also pays out the lesser of net income or a standard unitrust amount percentage but has a make-up provision that says if in any given year

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Know the B-I-C benefits.

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the net income amount is more than the standard unitrust payment and there is a deficit payment from prior years, a makeup payment up to the deficit balance can be paid.[3] The fourth payout option is a flip CRUT. The flip CRUT starts out as either a NICRUT or NIMCRUT and has a triggering event stated in the trust document. When the triggering event happens, at the beginning of the following trust tax year the trust flips from a NICRUT or NIMCRUT format into a standard CRUT. Note that there are specific requirements for qualifying as a triggering event. For example, the sale of a non-liquid asset or a date certain can qualify among other possibilities. However, an event that is deemed to be in control of the donor will not qualify. It is important for donors to work with qualified counsel to ensure their desired triggering event is allowable.[4]

As mentioned above, the selected payout rate affects the charitable deduction amount. Other factors affecting the charitable deduction include trust duration, payment frequency, and the IRC §7520 rate that is required to be used for the deduction calculation. Note that if a charitable deduction is allowable, the current month's charitable applicable funds rate (AFR) or the AFR of one of the two prior months can be used. For CRTs, the higher the AFR, the higher the deduction (all other factors being equal).

Trust Duration Options

Most CRTs last for one or two lifetimes or a term of up to 20 years. It is also possible to create a CRT that pays individuals for life that is guaranteed for up to 20 years. For example, an 80-year-old donor may want a CRT that pays the donor for life but have concerns about the possibility of dying soon after the CRT is established. In that case, the donor could set up a CRT that pays the donor for life with a provision in the trust document that guarantees the CRT will pay for at least 20 years. The trust might be structured so that if the donor passes away four years after creating the CRT, the CRT will continue to pay alternate beneficiaries named in the trust for 16 more years (i.e., the remaining amount of the guaranteed 20-year term). It is also possible for a CRT to

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the proposed sale is an asset or a stock (or membership interest) sale, and (3) whether the CRT is to be established by the owner or the business entity itself.

For the transfer of C Corporation stock to a CRT and a subsequent sale, the analysis is simpler because the corporation is itself a taxpaying entity. The sale of an S Corporation presents challenges, the first of which is that a CRT is not a permissible shareholder of an S Corporation and the transfer of stock to a CRT will cause the loss of the S Corporation status.[5]

Many business sales are structured as asset sales instead of stock sales because the buyer wishes to avoid responsibility for the liabilities of the prior company. In the case of an asset sale, it will be the assets that will first be transferred to the CRT, as opposed to the stock. In the case of the sale of an LLC, it sometimes makes sense for the LLC to transfer its assets to its owner or owners, who will then make a transfer of the business assets to the CRT.

While in most cases the business owner herself will establish the CRT, in some cases it makes sense for the business entity itself to establish the CRT. When the settlor of the CRT is an entity, the income interest is limited to a term of years, not to exceed 20 years, because an entity does not have a lifetime.[6]

Now is the time to engage the business owner looking to retire, so that he is aware of the benefits of a CRT before beginning the process of selling his business. Too often the business owner's genuine charitable inclinations are disregarded when the sale of a business is planned and negotiated and there is a flurry of other decisions to be made. The charitable gift planner's involvement at the beginning of the process is key to making sure the client's charitable legacy has a seat at the closing table.

Endnotes

1. Rachel Louise Ensign, How a landlord Making $75,000 a year Could End Up in the Millionaire Tax Bracket, Wall Street Journal (https://www.wsj.com/articles/how-a-landlord-making-75-000-a-year-could-end-up-in-the- millionaire-tax-bracket-11627723800) (July 31, 2021).
2. White House Fact Sheet: the American Families Plan (April 28, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/ (last updated October 23, 2021).
3. See generally 1978-1 C.B. 83.
4. Id.
5. 26 U.S.C. § 1361(b).
6. 26 USC § 664(d)(1)(A).

Richard (Rick) Mills, MBA, J.D., is a shareholder of the Michigan law firm of Marcoux Allen. He is a frequent writer and speaker and serves on the State Bar of the Michigan Probate and Estate Planning Council, where he has been involved in the drafting of several changes to Michigan trust law. He also serves as the vice chair of the Charitable Planning and Organizations Group of the American Bar Association Real Property Trust and Estate Law Section. He is a co-editor and contributing author of the book "Drafting the Michigan Trust," published by the Institute for Continuing Legal Education, and is currently writing the third edition of the book "Charitable Gift Planning: A Practical Guide for the Estate Planner," originally written by Thomas J. Ray Jr. and published by the American Bar Association. rmills@marcouxallen.com

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have more than two measuring lives. For example, donor may want the CRT to pay the donor for his lifetime and then to his two children for their lifetimes. In that case, he could establish a three-life CRUT and choose to receive the entire unitrust amount for his life with each child receiving 50 percent of the unitrust amount after his death.

Another option is for the CRT to pay individual recipients for the lesser of their lives or a term of years. For example, if a donor only needs 10 years of income and wishes for the CRT to terminate after 10 years even if she is still living, she could establish her CRT for her lifetime with provisions requiring the CRT to terminate at the shorter of her life or 10 years. These are not the only combinations, but provide an idea of how flexible a CRT can be. In all cases, remember that CRTs must meet the 10 percent minimum deductible interest test to qualify as a CRT. The longer the distribution period, then the smaller the deduction. Therefore, if there are too many income beneficiaries for a CRT with measuring lives or such beneficiaries are too young, some of the options above will not pass the 10 percent minimum deductible interest (MDI) test.

Also, because of the 5 percent probability test for CRATs with measuring lives, these options are not likely feasible for CRATs especially in a low interest rate environment. Other important considerations when choosing trust duration and income beneficiaries are any potential gift or estate tax liabilities. If anyone other than the donor is an income beneficiary, it is important for the donor to speak with qualified tax counsel about potential gift, estate, and generation-skipping transfer taxes.

Remainder Beneficiaries

The remainder beneficiary of a CRT must be a qualified 501(c)(3) organization. Typically, this will be a public charity (including a donor advised fund) or a private foundation. If a private foundation is (or can be) selected, the tax deduction is not as advantageous to the donor as compared to a public charity. One benefit of a CRT is the ease of selecting multiple charitable beneficiaries if that is desired by the donor. Another benefit is the donor can retain the right in the trust document to change the charitable beneficiary right up to termination of the trust.

Cautions

There are several cautions to be aware of with CRTs. It is important to know that certain private foundation rules apply to CRTs. These include the prohibition of self-dealing and taxable expenditures, as well as (in some cases) the excess business holdings and jeopardizing investment rules. One must also be mindful of any possibility of having unrelated business income tax (UBIT) in a CRT as UBIT is subject to 100 percent tax. Debt-encumbered assets can present complications for a CRTs and thus require special attention and advice from qualified counsel. It is also critical to appoint a qualified trustee to ensure the CRT will be properly administered, including making timely distributions and filing the appropriate tax returns.

Conclusion

CRTs can be a favorable and flexible charitable vehicle for the right donor. While it is significant to be aware of various nuances and types, as a practical matter most CRTs are uncomplicated standard CRUTs. As mentioned at the beginning, this article is meant to be an introduction to CRTs and does not cover all possibilities. It is important for donors to seek qualified counsel to address their specific tax situation and draft the CRT document if the donor decides to move forward.

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Endnotes

1. While capital gain is bypassed on the sale, distributions from the CRT are subject to income tax to the non-charitable beneficiary according to the four-tier accounting rules.
2. There is an alternative test called the "qualified contingency test" that may be satisfied instead of the 5 percent probability test, but it requires compliance with the terms of the qualified contingency, which is heavy administrative burden.
3. The deficit balance represents the different between the standard unitrust payment and the net income paid each year.
4. If a flip trust starts as a NIMCRUT, the makeup provision no longer applies after the trust flips to a standard CRUT.

Stephanie C. Buckley serves as senior vice president and senior regional fiduciary manager of philanthropic services within The Private Bank of Wells Fargo. Buckley earned a B.A. degree in economics with high honors from the University of California, Santa Barbara, a J.D. with a specialization in business law from the University of California, Los Angeles School of Law, and an LL.M. in taxation with honors from Loyola Law School in Los Angeles. Buckley is a member of the State Bar of California, on the Editorial Board for Planned Giving Today, and a past president for both the Los Angeles Council for Charitable Gift Planners and the Planned Giving Council of Ventura County. She serves on the faculty of the American Institute for Philanthropic Studies.
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Responsibility accompanies wealth.

Sharing a Spectrum of Legacies

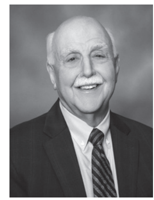
BY HOWARD EPSTEIN AND MARK WEBER

In 2012, the Omaha CAP® Study Group Program was launched by Mark Weber with the help of The Omaha Community Foundation. The goal of the program is "to make Omaha a more generous community." The Chartered Advisor in Philanthropy (CAP®) designation is an online program offered by The American College of Financial Services (King of Prussia, Pennsylvania). Once students enroll with The American College they may then become part of the study group. The Omaha Study Group is an invitation-only group of professionals from four disciplines: law, accounting, financial services, and gift planning. Classes are limited to 12-14 participants. Students meet for 15 two-hour sessions between May and December. By December 2021, we anticipate about 130 students will have participated in the Omaha CAP® Study Group and earned their CAP® designation.

Based on a recent 10-year survey, graduates of the Omaha CAP® Study Group estimate they have facilitated billions of dollars of charitable gifts. Graduates of the Omaha program are automatically part of the Omaha CAP® Alumni Group. Howard Epstein is the current president of the Omaha CAP® Advisory Board. In this article, Epstein interviews Mark Weber on his soon-to-be released book, "A Spectrum of Legacies," inspired by his Omaha CAP® Study Group Program experience.

Epstein: What inspired you to write a book?

Weber: I didn't set out to write a book. After facilitating the Omaha CAP® Study Group for the first four years, I found I had accumulated a drawer full of notes. Some notes were for upcoming classes, some for particular clients, and the rest for my own family. I began to organize them with the vague idea of preparing a white paper or pamphlet graduates of the Omaha CAP® program could share with their clients/donors to initiate conversations around philanthropy. Too often, advisors would complete the CAP® program inspired to help their clients incorporate charitable giving into their traditional planning, only to be discouraged when they couldn't adequately convey the message to their clients. I wanted to provide a tool for advisors to give clients and donors, written in laymen's terms, that would motivate the reader to understand and accept the responsibility that comes with wealth. Ultimately, this became a book. "The Legacy Spectrum" was released in 2017. Based on some of the wonderful feedback I received from readers across the country I realized I had struck a chord. It was this feedback that inspired me to write "A Spectrum of Legacies." Eventually I will phase out the first book and only offer "A Spectrum of Legacies."


Howard Epstein

Mark Weber

Epstein: What are the major points you hope to convey to the reader in "A Spectrum of Legacies"?

Weber: Probably the single most important message I want the reader to take away from the book is that responsibility accompanies wealth. Wealth is power and it should be used wisely. I also posit and address three thought-provoking questions that I repeatedly saw clients struggle with over my career. These were: 1) How much is enough? 2) How much should I leave my children? and 3) What will my legacy be? While the answer to each of these questions is intensely personal, the reader is provided a methodology to address each question. Worksheets are made available for spouses to work together to mutually agree on their answers.

I refer to "default" planning frequently. By this I mean traditional estate planning. Namely, when the first spouse dies, the surviving spouse receives all of the property. When the second spouse dies, the remainder of the estate passes equally to the children. As a result of the dramatic increase in net worth of the top 10 percent over the last decade, the amount of future inheritances has ballooned well beyond the wealth

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Planned Giving Champion: Ellen M. Brunner

Ellen M. Brunner serves as director of gift planning on behalf of the Columbus Regional Health Foundation and Our Hospice of South Central Indiana. Formerly she was director of the Catholic Community Foundation of the Archdiocese of Indianapolis, Indiana, president of the Columbus Regional Health Foundation, and a planned and major gift officer for Miami University in Oxford, Ohio. She received an MPA from Indiana University O'Neill School of Public and Environmental Affairs in partnership with Lilly Family School of Philanthropy and a B.A. in American Studies from Franklin College in Indiana. Brunner has been awarded the 2018 Columbus Regional Health Growth and Achievement Award and the 2015 International Catholic Stewardship Council Total Foundation Effort award.

What initially attracted you to work in the field of planned giving?

There are many aspects of planned giving that I enjoy. The art and science of the work, the relationship with the donor and the opportunity to impact programs long-term while providing for the donor a platform for a sense of accomplishment and pride are a few of the reasons.

I have always said that fundraising is an art as well as a science. We can be taught the technical side of the profession and share the information in writing or through conversation. However, the most successful fundraisers, planned giving professionals in particular, are also outstanding listeners. They have a strong sense of what and when to share based on the donor they are working with. Gift planners are able to convey that they are trustworthy and hold the organization, their work, and the donor in high regard.

Relationship is essential to the work of a planned giving professional and it is an aspect that I find very appealing. Working with a donor over time, sometimes years, to develop a philanthropic roadmap specific to their interests as well as planning goals and objectives is rewarding. The result of working with a donor on a planned gift is an opportunity to allow them the gift of meaningfully impacting the work they are most passionate about supporting. This brings me tremendous joy.

Did you have prior work experience that prepared you for a planned giving career?

My first post-college job was in fundraising. Each successive fundraising role I have had has shaped my development as a planned giving professional. Linda Brimmer, MBA, CFRE, then a leader at Sigma Theta Tau International was an incredible role model in many ways, but especially with regard to the art of fundraising. Through my work at Miami University in Oxford, Ohio, working with Karel Simbartl, I was given the technical training and a groundwork for my success as a planned giving professional. I still have notes and documents prepared while working with these memorable individuals. They pushed me to learn and do my very best.

When you started working in the field, did you encounter any unexpected hurdles or missteps? Did you change your approach as a result?

An early and memorable opportunity for learning came when I was overzealous with a gift proposal. Although the donor had the capacity, I overestimated their passion for the work they had been supporting as a volunteer for more than 10 years. I rushed the process, which is a critical misstep. I was reminded how essential it is to gauge and understand where the donor is in the process and not impart my opinion in shaping the timeline in terms of where I think the process should be. That said, learning never ends, and, as I look back, I have always tried to learn from my missteps.

What was the first or best planned gift you secured?

My first planned gift was in my first role as a planned and major gifts officer. I worked with a lovely person to establish a named scholarship. I was overwhelmed by the impact it would have

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Fundraising is art and science.

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holders' initial expectations. Unfortunately, wealth holders have done little to prepare their children to receive these out-sized inheritances.

Studies show that using this "default" planning results in a nearly 70 percent failure rate in wealth transitions from one generation to another. Failure is defined as removal of the assets, involuntarily, from the control of the beneficiaries. The antidote to these transition failures is increasing trust and communication within the family. This can be done by increased communication, verbal and written, holding regular family meetings, and giving together. The book is peppered with stories of families that have incorporated these techniques to raise children who will be prepared to be good stewards of their inheritance. The book is intended to motivate wealth holders to stop simply "dumping" inheritances on their heirs with no direction and to take responsibility for preparing them to receive large sums of money.

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Epstein: How do you envision gift planners using your book?

Weber: Based on feedback I received on how gift planners used "The Legacy Spectrum," I anticipate it will be similar for "A Spectrum of Legacies." Individual books were sent to select donors to initiate the conversation to transition them from annual donors to major donors. Others used the book to broach the discussion on legacy planning and leaving an ultimate gift. I hope gift planners will highlight excerpts of the book that portray families incorporating charitable giving as a means to pass on family values to future generations. I anticipate nonprofit boards giving their boards of directors copies with personal notes. An organization kicking off a planned giving campaign might find it a nice gift and icebreaker for their primary donors. Those nonprofits that have professional advisor councils might make a gift of the book to committee members to energize them to talk to their clients about giving. The book is intentionally an "easy read." Gift planners can give a donor the entire book or just copy and send select stories or excerpts. Similarly, worksheets or sample letters can be sent with a personal note. The book provides an easy way to jump-start conversations that otherwise might take months or years to initiate. The website will have free worksheets and sample letters the reader can download and modify to meet their individual needs.

Epstein: In both of your books you devote considerable attention to collaboration among advisors. Why is that and what role do you see the charitable gift planner playing?

Weber: You are correct. I do make a point of encouraging the reader to reimagine how he/she uses professional advisors. All of us tend to use our professional advisors as "fire fighters." We only call them when we have a "fire" and we want them to put it out. In our younger years, this may work fine. However, it is my experience it does not work as well for those in their retirement years. As we age, we begin to lose control and power. We gradually become more dependent on others. Our sphere of influence shrinks. In short, our world becomes smaller. We become more fearful. We turn inward. Our decision making may not be as sound as it once was.

I encourage those in their 60s, 70s and 80s to form their own personal board of advisors. The members typically start with an attorney, accountant, and a financial planner. The makeup of the board may differ based on individual circumstances. I encourage this board to meet as a group with the client at least annually. By meeting as a team, everyone receives the same information and can openly discuss opportunities and challenges they see on the horizon. The client will no longer get conflicting recommendations from different advisors. There will be fewer "fires" as the advisor team anticipates and addresses them before they become a problem. The client's confidence is maintained.

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CHAMPION *continued from Page 7*

on generations to come and the donor's willingness to make the gift.

What proportion of your work involves current gifts? Deferred gifts? Blended gifts? Transformational gifts?

My goal is to share the needs of the programs I represent while honoring the desire of the donor. Therefore, I focus on finding a blend of donors who can meet the current, deferred, blended, and transformational gifts that are needed for programs and projects while meeting the donors' goals and objectives. Typically, current, blended, and transformational gifts are where I spend the majority of my hands-on fundraising energy.

Do you have a "what did I get myself into" story about a donor, professional advisor, or nonprofit development officer?

I have found myself in many interesting situations. Some instances have been amusing, some have called for thick skin, while others have required patience. I recall the time a dear, older donor invited me to a chair exercise class at her assisted living facility. Another time, the day before a holiday, a donor who was not happy with a situation pushed me to the point of tears. Of course, they never knew that was the case. And then there are the donors who along the course of the gift planning journey were on board with the gift but then quietly exited the process. None of these situations is out of the ordinary for any professional fundraiser. I have learned to not take things personally and do my very best for the donor, regardless of the attitudes along the way or end result.

Did you ever complete a planned gift you subsequently wished you had declined?

Anytime I have worked with a unique collection of some kind, I have found it to be challenging to meet all the stops for the donor, the charity and as required by the Internal Revenue Service. That said, these gifts make the field and work interesting. I find that I can never know enough and can always learn through the process.

Did you ever decline a planned gift you subsequently wished you had completed?

I remember a gift of real estate that we may have been too shortsighted about at the time. I was a bit hesitant to explore these gifts when I was a young fundraiser because of the horror stories that I had heard. However, I know better now that the steps followed to ensure a gift of real estate goes smoothly and without negative consequences for the donor or the charity make a poor outcome highly unlikely.

Which person (or group) has had the most influence on your career?

Throughout my career, I have been influenced by several very talented people. Ted Grossnickle, CFRE, Founder and Senior Consultant at Johnson, Grossnickle & Associates was an early mentor beginning when I was a student at Franklin College where he was Vice President of Alumni & Development. Phil Purcell, J.D., has also been an important advisor and sounding board. His guidance began when I attended conferences as a junior professional fundraiser where he led educational sessions. As my career advanced and I had the opportunity to engage with Phil in his work as a consultant, I learned through his influence on my work to advance gift plans. I admire Ted and Phil's work ethics, manner with donors and colleagues as well as their technical skill.

During the next five years, do you see changes looming in the field of planned giving? What will they look like?

Over the course of my 25-year career, the fundraising field has seen its share of challenges. Whether through changing legislation or as a result of a recession, a pandemic or the tragedy of a terrorist attack, the fundraising field has had to flex and adapt, and it has. There are always factors that influence how the job gets done. However, there will always be generosity in the world and people who wish to shape and ensure causes important to them.

Share needs and honor donor desires.

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Age 65 and over is the target demographic.

LEGACIES *continued from Page 8*

They are more likely to live their remaining years in a state of abundance.

The bulk of charitable gifts made in our country are made by those age 65 and older. This is the target demographic of many gift planners that focus on major and planned gifts. Clients contemplating a large gift or bequest typically check with their tax advisors to make certain the gift they are considering makes good tax-sense. Unfortunately, a major gift, years in the making, can be squashed by a simple comment from a tax advisor: "You won't be able to utilize the entire deduction this year." Had a gift planner been in the room with the client's professional advisors, they could have easily proposed an alternate approach and still achieved the goals of both the donor and nonprofit. For example, spread the gift out over a few years or make smaller current gifts with a larger bequest, etc. The gift planner needs to ask the donor to be invited to a meeting with the tax advisors. When everyone is in the same room, they can confirm the client's intentions and mutually develop a strategy to accomplish them.

I am beginning to see some gift planners expand their role of soliciting for a single organization to become more of a charitable consultant for the donor. They help the donor craft their own charitable giving plan based on the donor's personal values. This is encouraging. Rather than view giving as a "zero sum" game, the gift planner is "expanding the pie" and benefiting not just his own organization but the community in general. In Omaha, we are starting to see those gift planners who are CAP® graduates take this more expansive role as consultant and solicitor. It bodes well for our community.

WRITE US

Planned Giving Today readers are invited to respond to articles appearing in the newsletter by writing to "Reader Reaction." Articles, news, humorous anecdotes, and other items of interest to the planned giving community are also welcome.

Send editorial correspondence to: phil@pgtoday.com

Epstein: Earlier you mentioned your intention in writing a book was to help advisors introduce charitable giving to their clients. How do you feel that has worked out in Omaha?

Weber: It has certainly exceeded any expectation I may have had! Each of the last 10 years has seen 12-13 advisors and gift planners earn the CAP® designation. Attendance in our classes consistently exceed 85 percent. Some years we have a waiting list to get in. As reported above, advisors estimate since enrolling in the CAP® study group program, they have helped their clients facilitate billions of dollars of gifts and bequests.

Advisors who complete the CAP® study group program seek each other out to work together to help their clients achieve their financial and charitable goals. The networking between CAP® graduates has been an unexpected surprise. Some meet regularly over lunch or coffee. Others have begun informal "teams" to work together whenever possible. Next year our advisory board intends to encourage even more of this with quarterly "lunch and learns" with CAP® graduates and their guests.

The community foundation reports that over 80 percent of new accounts opened are a direct result of referrals from professional advisors. Nearly three-fourths of these are from CAP® graduates. The size and frequency of the gifts referred from a CAP® graduate are twice the size of gifts from an advisor who has not gone through the CAP® program. The impact to the community foundation has been significant and demonstrable. So having nearly 130 advisors and gift planners complete the CAP® program has had noticeable effects.

Perhaps most rewarding to me is that advisors are beginning to report that clients are walking into their office with a copy of my book and asking to do "legacy" planning. On several occasions, the client received a copy of the book from a gift planner. Advisors are beginning to be nudged out of the comfort of their traditional estate planning mode and motivated to help the clients incorporate charitable planning strategies to achieve the client's legacy goals. In short, we are beginning

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The Chartered Advisor in Philanthropy® (CAP®) designation provides fundraisers and advisors with a common body of knowledge and a shared credential, enabling them to collaborate effectively with clients on legacy planning. With the CAP® designation, you'll be able to integrate charitable planning with the donor or client's overall estate and business plan and help them achieve a positive impact for themselves, heirs and their community, positioning you as a trusted advisor and partner. You can learn more here about the program and how to apply: https://www.theamericancollege.edu/designations-degrees/CAP

to "move the needle" in our quest to "make Omaha a more generous community." The book is beginning to drive demand in our community.

Epstein: I understand The American College of Financial Services is developing a micro-course around your new book. What can you tell me about that?

Weber: Yes. It is targeted to be completed by Dec. 31, 2021. They are exploring expanding their course offerings to include "micro-courses" to make learning available to a broader population of individuals not necessarily interested in pursuing a degree or designation. President George Nichols is very supportive of the impact the CAP® program can make in communities across the country. As The American College ventures into micro-courses, he suggested they start with my book. It is my understanding that he is so excited about the project that he and his wife have made a generous donation to personally underwrite the development costs so the course can be made available to everyone without regard to their ability to pay. That speaks volumes to his personal values! The course will be used by families and individuals to develop their own legacy plans with the help of their professional advisors. Most importantly to me, is that more people will have access to the book and its teachings. Maybe we can begin to motivate more people and their advisors in communities around the country to incorporate charitable giving in their planning.

Epstein: Since you "retired" in 2021 you have written a book, helped launch a micro-course, conducted a survey of Omaha CAP® graduates, and continue to lead the Omaha Study Group program. What's next for you?

Weber: My wife just rolls her eyes when she hears me tell someone I "retired." Even though I no longer receive a paycheck, I still keep about the same hours I did when I was "working." I have been blessed with good health and high energy. What we are doing is important work that can help families in our community and across the country. I have no intention to slow down. This will be my legacy.

In Omaha we are in a unique position with nearly 130 CAP® graduates and more to come. We are gradually changing the culture of professional advisors to include philanthropy as an important component of the planning process rather than simply an afterthought. I believe it can be a model for other communities. Through the book and micro-course, I hope to drive clients/donors to professional advisors to do legacy planning.

While I plan to personally stay actively involved in facilitating CAP® classes, I am beginning to turn this over to a group of CAP® graduates. Also, we have raised enough money to support our "Conversation With CAP®'s" quarterly lunch-and-learn programming for the indefinite future. My goal is to make the CAP® course facilitation and the alumni programs self-supporting beyond me. We have a lot of momentum and I intend to keep it going!

YOUR BYLINE

We'd like to include at least one new writer in every issue of Planned Giving Today. It could be you!

If you have an article idea, send it to: phil@pgtoday.com

Community-based promotion of gift planning.

Howard Epstein is the executive director of the Jewish Federation of Omaha Foundation. He earned his B.S. in Business Administration from the University of Nebraska, his J.D. from Creighton University School of Law, and his professional designation as a Chartered Advisor in Philanthropy (CAP®) from the American College. He is currently the chairman of Omaha's CAP® Advisory Board, a member of the Charitable Gift Planners of Nebraska board of directors, and the Omaha Estate Planning Council. He has worked in and owned two family businesses, and was previously in the private practice of law. hepstein@jewishomaha.org

Mark Weber is the author of *A Spectrum of Legacies* (2021) and *The Legacy Spectrum* (2017). He founded the Omaha Chartered Advisor in Philanthropy (CAP) Study Group Program in Omaha, NE in 2012 in partnership with the Omaha Community Foundation. Mark is a past president of the Omaha Estate Planning Council and the Great Plains Federal Tax Institute and a recipient of the Sower Award from the Charitable Gift Planners of Nebraska. Mark earned both his B.A. and J.D. from Creighton University. He earned a M.S. in Financial Services as well as his CAP® designation from The American College. mark6weber@gmail.com

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LOOKING AHEAD

◆ Now Is the Time for the Powerful but Often Overlooked Lead Trust

◆ Planned Giving Pipeline Reports: A Tale of Two Tallies

◆ Latest News on Gift Annuities in New York

◆ American Council on Gift Annuities 2022 Conference Details

◆ And More ...

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Two Steps Forward

◆ **FACING THE CHALLENGES.** This has been a difficult year for many gift planners, both personally and professionally. Many of us have lost loved ones and beloved donors during the COVID crisis. Many of our charitable organizations have struggled to maintain appropriate staffing levels, serve our constituents in need, and balance our budgets. As we reflect on the year, while it has been a step back in so many ways, we should consider our blessings as well.

◆ **CONSIDERING OUR BLESSINGS.** I will share some blessings from this year, and I am sure you will add your own.

- **Increase in estate planning awareness.** Concerns for health and family have prompted many persons to consider their estate planning priorities. A survey conducted for LegalZoom.com found that 62 percent of Americans still do not have a will. However, of those who do have a will, 12 percent created the will in the past 12 months and 44 percent in the last five years. The survey found that of Americans who do have a will, just over a quarter, or 26 percent, got one because they were fearful of serious illness or death related to Covid-19.

  Of course, many persons plan with the use of techniques other than a will. Popular options include trusts, beneficiary designations of retirement plans, payment on death of bank or stock accounts, transfer on death of real estate, and joint ownership of assets. Given the surge in awareness of estate planning in general, gift planners can promote consideration of charitable options.
- **Philanthropy responds to crisis.** According to Giving USA compiled by the Lilly School of Philanthropy, total charitable giving for 2020 grew 5.1 percent measured in current dollars over the revised total of $448.66 billion contributed in 2019. Adjusted for inflation, total giving increased 3.8 percent. Of course, the giving total for 2021 will not be available until the Giving US report issued in 2022, but the prospects appear strong for another year of increased giving.
- **Giving by individuals increased.** Individual giving totaled an estimated $324.10 billion, rising 2.2 percent in 2020, an increase of 1.0 percent, adjusted for inflation. Giving by individuals achieved its highest total dollar amount to date, adjusted for inflation, but it comprised less than 70 percent of total giving for only the second time on record. Of course, gift planning by individuals of complex assets such as business interests, real estate, retirement plans, and so forth should be a priority for gift planners.
- **Giving by foundations increased.** Foundation giving estimated $88.55 billion, a growth rate of 15.6 percent, adjusted for inflation), reaching its highest-ever dollar amount. Giving by foundations, which has grown in nine of the last 10 years, represented 19 percent of total giving in 2020, its largest share on record.
- **Giving by bequest increased.** Deferred gifts by bequest were estimated to be $41.19 billion in 2020, and grew 10.3 percent from 2019, an increase of 9.0 percent, adjusted for inflation. Giving by bequest often fluctuates substantially from year to year.
- **Giving to seven of nine charitable subsectors increased.** Giving to religion, education, human services, foundations, public-society benefit organizations, international affairs, and environmental and animal organizations all increased in 2020.

Unfortunately, giving to arts, culture, humanities, and health organizations decreased in 2020. Many in-person walks, runs and other fundraising events that disease-specific health organizations host as major fundraisers saw a decline in participation and charitable revenue due to the pandemic.

◆ **TWO STEPS FORWARD IN 2022.** As shared by William Booth, the founder of The Salvation Army, “If you want to change the future, then you are going to have to trouble the present.” Gift planners must continue to advocate for their charitable programs today in order to see even more blessings in the future!

Phil Purcell, Editor