



## Charitable giving in a downturned economy

Defying gravity, some charitable giving plans can levitate or even sky rocket in a low interest rate environment or sluggish economy. With a little creativity, donors can achieve their philanthropic, economic and tax goals, even in times of economic uncertainty. Among the star performers are Charitable Gift Annuities, Charitable Remainder Trusts, Personal Residence Remainder Gifts, Charitable Lead Trusts, and IRA Charitable Rollovers.

### Charitable Gift Annuities

Charitable Gift Annuities (CGAs) are particularly useful for donors unnerved by the ups and downs of interest rates and the stock market. These donors want to be able to count on a stable income, unaffected by future fluctuations in interest rates and stock values, and want the security of payments they cannot outlive.

A CGA provides all this in a simple contract. A charity, in exchange for a gift of cash or other property, agrees to pay an annuity of a fixed amount of money to one or two annuitants for life. Usually the annuitant is the donor, or donor and spouse, but can be any person the donor selects, such as an elderly parent.

Most charities offer the rates recommended by the American Council on Gift Annuities. The rates vary depending on the number of annuitants (one or two) and their ages. Higher rates are paid to older annuitants on account of their shorter life expectancy. For example, the single-life rates currently available for donors ages 60 to 90 range from 5.5% to 10.5%.

These rates often compare favorably to the returns on CDs, money market accounts and mutual funds. For instance, the 3% paid on a CD can be doubled to 6.1% on a CGA for a 70-year old annuitant. Moreover, if the annuity is funded with cash, a significant portion of each payment will be a tax-free return of principal (64% tax-free for a 70-year old annuitant, thereby boosting the effective payout rate to 10.2% for an annuitant in the top income tax bracket). If the annuity is funded with appreciated stock or real estate, the capital gain is spread over the annuitant's lifetime, and each payment is part ordinary income, part capital gain and part tax-free return of basis.

Further, donors can claim an income tax deduction in the year of the gift for the amount of the contribution, less the present value of the life payments to be made to the annuitant. To the extent not fully used in the year of the gift, the deduction can be carried forward for up to five years.

The favorable rates (partly tax-free), secure fixed income, income tax deduction, and donors' freedom from investment responsibility, propel CGAs above the turmoil of a financial market in disarray.

### Charitable Remainder Trusts

Charitable Remainder Trusts (CRTs) provide another way for donors to increase their income stream in a downturned economy. Let's take the example of a married couple in their late sixties. They are retired. They would like to increase their retirement income, reduce their income taxes and estate taxes, and make a gift to their favorite charitable organization. Let's say they have \$1 million of publicly-traded stock with a low cost basis, and it yields only 2% in annual dividends. If they sell the stock, they pay a capital gains tax, leaving less to reinvest.

Instead, they can transfer their stock to a CRT, and the trust then sells the stock with no tax and reinvests the gross proceeds. The net result is that their retirement income over their lifetimes may increase because they have the full \$1 million working for them, rather than what would be left after paying capital gains tax. If they set the CRT payout at even the minimum allowed rate of 5%, they will have increased their income stream substantially over the 2% stock dividends they were receiving.

The CRT donors in our example also get an upfront income tax deduction for the present

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necessary and also ensured that our volunteers had time to enjoy the complimentary breakfast and lunch service provided by the Bar Foundation. Participants came from Immokalee but also from other parts of our community, several indicating they had driven out from Naples. Their problems were many and varied -- no one was surprised to find foreclosure and bankruptcy were popular topics.

In today's economic conditions, a lot of people are suffering, both financially and emotionally. If our clinic had helped just one person, it would have been worth the great effort required to hold it. To think that we helped make a difference in the lives of over four dozen is heartwarming.

A special thanks must go to Lisa Mead and Kathy Williams without whom none of this would have been possible. If you think holding a Saturday clinic in Immokalee is just another day at the office for them, think again, this is personal and it shows in their enthusiasm and commitment. Also, great thanks to Jeff Ahren and Ana De La Cruz of Legal Aid whose leadership and organization made this clinic a success.

To Sister Maureen Kelleher, Robert Bencivenga, and Max Guerra, attorneys with Legal Aid who volunteered despite doing this every day, you inspire us all (Sister Kelleher even driving a participant off site to take care of some important paperwork). Hodges University should also be recognized for their contribution of the premises, I hope we will partner again on this event in the future. Finally, I would like to extend a personal thank-you to the volunteers below for donating your time and making a difference in our community.

Jeff Ahren	Lilliana Carrender	Reuben Doupé
Marc Huling	Dominick Russo	Pieter Van Dien
Nora Baeza	Ellen Chadwell	Stephen Groggoza
Sr. Maureen Kelleher	Jon Scuderi	Andrew Weyl
Raymond Bass	Veronica Culbertson	Max Guerra
Christi Lunsford	Wayde Seidensticker	Kathy Williams
Robert Bencivenga	Tara Miller Dane	Phares Heindl
Janeice Martin	Andrew Solis	Keith Williams
M. Elizabeth Bennett	Ana De La Cruz	Richard Hollander
Margaret McMorro	Stephanie Sussman	Carlo Zampogna
Maria Elena Blecha	Sonia Diaz	
Lisa Mead	Lisa Van Dien	

## Missed the Clinic? Here's how you can help in the future:

### Spring Legal Clinic

The Collier County Bar Foundation will be holding a spring clinic in conjunction with Law Week at the Naples offices of Legal Aid in April. Further details will be provided as we get closer to the event.

### Foreclosure Task Force

The Collier County Bar Association and Legal Aid Service of Collier County have teamed up to assist people who are facing foreclosure through both one-to-one counseling and public education. Volunteers are needed for all aspects of the effort and the need is not just limited to attorneys, bankers and other financial professionals are also needed to help with counseling. Please contact Jeff Ahren at Legal Aid to find out how you can get involved --- 289-8130 or jahren@legalaid.org

### Florida Attorneys Saving Homes

The Florida Attorneys Saving Homes project is underway. Led by the Florida Bar Foundation and Florida Legal Services, volunteers are needed to help disadvantaged homeowners who are facing the possibility of foreclosure explore work-out options with their lenders. Please contact Jon Scuderi to find out how you can help ---- 436-1988 or jscuderi@gfsestatelaw.com

### Pro-Bono Work

Legal Aid is always in need of pro-bono legal assistance for our community in a variety of areas. Please contact Jeff Ahren at Legal Aid ---- 289-8130 or jahren@legalaid.org

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value of the remainder interest that will pass to charity when the second of them dies. If they cannot make full use of the deduction in the year of the gift, they may carry it forward for up to five years. The increased income stream, in combination with the upfront charitable deduction, work to maximize the economic return to the donor.

To top it off, by transferring \$1 million to a CRT, the donors' estates are immediately reduced by \$1 million for estate tax purposes.

### Personal Residence Remainder Gifts

Experiencing the downturn in the real estate market, many seniors are more inclined to remain in their homes rather than selling at a reduced price. Others, irrespective of the market, like where they live and remodel their homes to make accommodations for their physical needs, such as a master bedroom and bath on the main floor. With more seniors continuing in their homes, Personal Residence Remainder Gifts deserve increased consideration.

A donor may make a gift to the charity of a remainder interest in a personal residence taking effect at death, while retaining a life estate. The tax benefit is that the donor may claim an income tax deduction for the remainder in the year of the gift. In a low interest rate environment, the calculation of the present value of the future remainder interest produces a larger income tax deduction. For example, a 70-year old with a \$500,000 residence is entitled to an upfront deduction of \$317,000 for a remainder gift in November 2008. This large deduction, if not fully used in the current year, may be carried forward to shelter income for up to five years. The resulting cash savings can be helpful to donors who have seen declines in their investment values and income.

An alternative for a donor who desires an additional income source is to transfer the remainder interest in exchange for a CGA. The donor retains a life estate and receives a lifetime annuity and current income tax deduction.

If the donor should later vacate the residence before the life estate expires, the donor has several early exit options. The donor may lease the home and collect the

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rent for the remainder of the life estate. The donor and charity may agree to a joint sale of their interests to a third party and split the sale proceeds actuarially. The donor may make a gift of the remaining life estate to the charity and take an additional income tax deduction. The donor may transfer the remaining life estate to the charity in exchange for a Charitable Gift Annuity, or to a Charitable Remainder Trust, and receive an income stream for life and an income tax deduction.

## Charitable Lead Annuity Trusts

Charitable Lead Annuity Trusts (CLATs) pay out a fixed annuity amount to a designated charity for a set number of years. When the trust ends, all remaining assets are distributed to (or continue in trust for) designated family members.

The goal of every CLAT is to generate income and appreciation at a rate greater than the IRC Section 7520 rate (the rate of growth assumed by the IRS). If it does, this excess passes to family members free of gift tax and estate tax. The Section 7520 rate for November is only 3.6%. Highly appreciating assets that can beat the IRS hurdle rate are the ideal choice for funding a CLAT. For example, if the CLAT grows by 8.6% (interest, dividends and appreciation), the difference of 5.0% accumulates for the family.

Superlative results are possible for CLATs when there is a confluence of low interest rates and depressed asset values. The value of the remainder gift to family is calculated at the time the CLAT is created. Low interest rates reduce the amount and/or shorten the term of the payout to charity necessary to zero out the calculation of the remainder gift. Contributing de-valued assets expected to rebound in the coming years can further boost the odds of a CLAT producing a significant transfer to family.

Taking a CLAT to the next level involves first transferring assets into a Family Limited Partnership (FLP) and then transferring a nonvoting interest in the FLP to the CLAT at a discounted value. The valuation discount allows the remainder to be zeroed out with even smaller payouts and/or shorter terms. Whether a CLAT is funded with \$100,000 or \$100,000,000, the remainder, whatever amount it turns out to be, can be transferred to family with zero gift tax.

## IRA Charitable Rollover

A vast amount of wealth has been stored up in Individual Retirement Accounts. Individuals over 70½ years of age must take minimum distributions from their IRAs to avoid significant penalties. These distributions are subject to income tax and, ultimately, estate tax.

Welcome news is that Congress has just extended the IRA Charitable Rollover. Individuals at least 70½ may direct IRA distributions of up to \$100,000 to qualified charities in each of the years 2008 and 2009. These distributions count toward the required minimum distributions (but are not limited by those amounts) and are excluded from federal gross income. Ohio is expected to enact corresponding legislation. IRAs are now an alternative source of tax-efficient contributions.

## Advisors' Role in Initiating Discussion of Charitable Giving Benefits

There's more to charitable giving than just the financial and tax advantages. Donors also derive the personal satisfaction that comes from supporting a favorite charitable organization, building relationships with the organization's staff and other donors, involving family members in philanthropy, and receiving recognition of their generosity from the organization and community.

It's for all these reasons – financial, tax, philanthropic and social – that we as professional advisors have a role and responsibility to play in initiating a conversation about charitable giving with our clients, and providing counsel to them in accomplishing these goals. There is much to be gained by charities and donors alike – in the best and most challenging of economic times.

## Americans With Disabilities Act – Big Changes in 2009

Historically, those seeking protection from employment discrimination on the basis of their disability have been traveling down a challenging road.

The promise of 1990's Americans with Disabilities Act (ADA) was dimmed a decade later by United States Supreme Court interpretations that made it extremely difficult for a person to prove they were "disabled" in a legal sense. Supreme Court decisions in 1999 and 2002 reduced a person's ability to demonstrate that they were entitled to protections under the ADA. While the ADA was designed to protect individuals with disabilities from employment discrimination, individuals who were no longer limited in their life functions through the use of medication or other mitigating actions frequently discovered they were not protected by the ADA.

Now Congress has passed, and President Bush has signed, the Americans with Disabilities Act Amendments Act of 2008 – a law that attempts to restore ADA back to its original intent. Under the new amendments, effective January 1, 2009, the determination of whether a person has an impairment that substantially limits a major life activity, a "disability" in the legal sense under the ADA, must be made, with a few exceptions, without regard to the beneficial effects of a mitigating action, such as taking medication. In addition, the amendments require that the disability only has to limit one major life activity.

While beneficial to the worker, these amendments will provide more certainty in the interpretation of the ADA for companies, as well. Not only will the amendments make it easier for workers to establish they are disabled, but they will also improve a company's ability to determine whether they are dealing with a worker who is disabled, especially when the worker asks for an accommodation based on their impairment. This provides forward-thinking companies the opportunity to establish effective human resource management policies that facilitate disabled workers.

It is extremely important that human resource managers understand the significance of these amendments. To that end, the Florida Commission on Human Relations offers workshops and an annual Employment Law Conference to keep individuals informed of their rights and responsibilities under state and federal anti-discrimination laws. By learning more about these important laws, business owners and managers can avoid costly lawsuits, decreased productivity, and low employee morale.

For more information about the Florida Commission on Human Relations, our upcoming Florida Employment Law Conference or the trainings we offer, please visit our website at <http://fchr.state.fl.us>.

Anice R. Prosser, SPHR, CCUE  
Senior Vice President, Human Resources, Envision Credit Union