

Making a Charitable Remainder Trust 'Worthy'

by Robert F. Sharpe, Jr.

With rebounding investment markets and increases in real estate value in many parts of the country in recent years, more donors again own highly appreciated, low-yielding assets. As a result of these and other factors, including the aging of Baby Boomers, we are beginning to see an upturn in charitable remainder trust (CRT) activity. According to recently released IRS reports, over 116,000 charitable remainder trusts now hold over \$100 billion in assets. The average value of charitable remainder unitrust assets is just over \$1 million, so increased activity in this area is certainly welcome!

In many instances, charitable entities are the driving force behind the creation of these trusts, whether in the regular course of encouraging planned gifts, or as ways to structure larger gifts in the context of capital campaigns. Increasingly, however, a large portion of charitable remainder trusts are being created by donors and their advisors without the contemporaneous involvement of the eventual charitable beneficiaries of the trusts.

Discovery can be vital

While it is certainly important to inform and educate donors about the benefits of establishing CRTs and other planned gifts, it can be equally crucial to discover trusts that donors have already created on their own.

Charitable remainder trusts are by nature irrevocable. Recall, however, that when creating a charitable remainder trust, a donor can retain the right to change the charity or charities that will ultimately enjoy the remainder. One study sponsored by the National Committee on Planned Giving (NCPG) [*Planned Giving in the United States 2000: A Survey of Donors*: see www.ncpg.org] revealed that some 70% of donors surveyed said they had retained the right to change the charity or charities that would receive the remainder of their trust.

When donors are creating such trusts on their own, it may be even more likely they will keep open the option to change the charity that receives the remainder.



Robert F. Sharpe, Jr., is president of The Sharpe Group. He advises a number of the nation's leading nonprofits in the design, implementation, and management of their gift planning initiatives.

CRT or bequest?

Due to its ability to be modified, a CRT may in reality be very similar to a bequest via a donor's will. It comes as a surprise to no one that a bequest through a will can be changed at any time.

It may actually be easier, however, for a donor to change the remainder beneficiary of a CRT, as this may only require completing a form supplied by a financial services provider and may not even involve a fee. Consider how much more difficult and costly it may be to change the provisions of a will. Ironically, then, while a CRT itself is "irrevocable" and may be perceived as more of a "sure thing" than a bequest by a nonprofit's management, such may not be the case.

One of the important objectives of a planned gift development effort, therefore, should be to attempt to not only discover bequest intentions and other expectancies but to also encourage donors to notify charitable recipients of their inclusion in a donor's CRT. Once notified, the charity then has an opportunity to discuss the donor's intentions and may be able to persuade a donor to make the charity's remainder interest unconditional.

In the context of a capital campaign, special recognition might be given when donors name a charity as irrevocable beneficiary of a CRT. In such cases, when a donor reveals that a charity is named in a CRT, the donor may be encouraged to modify his or her trust to ensure that the charity's interest is, in reality, not subject to change, and that recognition is then properly accorded in keeping with campaign guidelines.

Keep in mind also that Financial Accounting Standards Board (FASB) rules require that a charity report as income the present value of the remainder of a CRT in the year that it is discovered. It is not permissible to report the remainder of a CRT for accounting purposes where the donor has retained the right to change his or her mind and name another charity to receive all or a part of the remainder.

What to do?

It is important for managers of nonprofit fund development efforts to be attuned to the issues raised above. Keep in mind that when a donor checks off a box and returns a card or in some other way indicates he or she has included or would consider including a charity in her will or other estate plans, this may mean a donor has included a charity as one of the remainder interests in a CRT. The NCPG study referenced earlier reported that more than 50% of CRTs name more than one charity. If charitable remainder trusts were to name an average of five beneficiaries, that would mean there are some 580,000 individual trust expectancies to be discovered in America today.

Discovering a previously unknown remainder from a CRT offers a charitable entity the opportunity to explore various options with a donor, including the possibility of making the charity's interest unchangeable as a condition of increased levels of recognition in a campaign or other funding efforts.

In some cases, a donor might even be in a position to waive all or a portion of his or her income interest in the trust, thereby causing a full or partial termination of the trust and the enjoyment of a major current gift by the charity.

Keep in mind that all CRTs are not created equal. There may be vast differences in their ultimate value. The wording of the beneficiary designation can make the difference between a CRT being simply a more sophisticated bequest expectancy from the charity's perspective, or a gift that can be relied on and recognized as a permanent commitment.

Editor's note: This article is excerpted from the popular Sharpe seminar "Integrating Major and Planned Gifts." Visit www.sharpenet.com/seminars/ptc/ for more information.