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A Basic Introduction to Charitable Giving

Advantages of a Revocable Living Trust for Residents of NJ

planning matters

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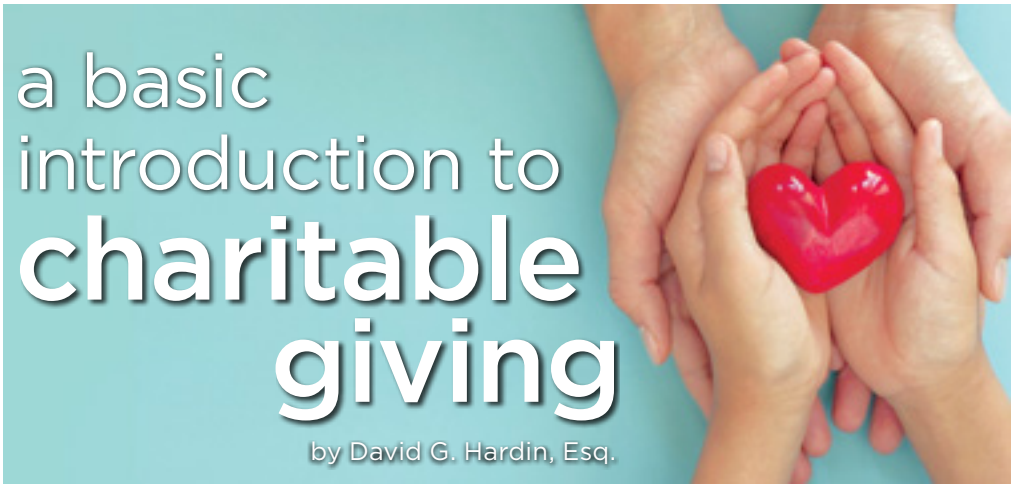
a basic introduction to charitable giving



by David G. Hardin, Esq.

A number of firm clients are interested in charitable giving, whether made during lifetime or upon death. The reasons behind the differing approaches are varied.

One of the benefits of a lifetime gift to charity is the immediate income tax deduction that may be available.[1] Unlike lifetime gifts to charity, deathtime gifts are not deductible for income tax purposes, although they may be deductible for estate tax purposes.[2] The federal estate tax is applicable to taxable estates in excess of $12.06-million, and as a result, generally taxpayers will benefit more from a lifetime gift to charity than a deathtime transfer.

Despite the potential tax benefits available to taxpayers through life gifts, there is a reason why taxpayers might prefer to make a gift at death rather than during lifetime. During lifetime it is difficult for an individual to predict how much they will need to support themselves. For that reason alone, many clients opt to provide their charitable gifts after death.

Assuming the decision is made to provide for a charity on death, the next issue for consideration is whether to provide a fixed dollar amount or a percentage of the estate. A fixed dollar gift is generally more efficient because it is clear from the outset exactly how much the charity is to receive, and once paid, the charity's interest in the estate terminates. By contrast, if a percentage of the estate is given to a charity, the amount due the charity cannot be determined until all assets are recovered, all debts, taxes and expenses are paid, and administration of the estate is largely complete. In addition, when a charity is provided a percentage of the estate, New Jersey law requires the Attorney General's Office to be notified, and, as overseer of charitable organizations, the Attorney General will review the estate administration to protect the charitable interest.

Leaving a charity a specific amount or a percentage of the estate is not a question of right or wrong; either path is certainly viable. It is more a matter of the client's wishes and the better approach given all of the circumstances. In some situations a client will spread percentages among charities and family, and in that way, ensure that everyone receives a portion of the estate. Another way to address the issue is to employ a hybrid formulation. For example, one might provide a charity "$50,000 or 10% of my estate, whichever is less [or greater]." This type of a provision is useful when the size of one's estate at death is unpredictable.

Yet another approach that can be useful under certain circumstances is a layered approach, one that provides a specified amount to children, then provides a specific amount to charity, and then leaves the remainder of the estate to the children. This scenario is appropriate when an individual's goal is to ensure the children are taken care of first with a designated amount, then the charity receives its gift after the children are paid their initial distributions, and finally any excess is paid to the children.

As should now be evident, there are a number of approaches to consider when making gifts to charity. Which approach to adopt depends upon individual client circumstances, and there is no "one size fits all" approach.

Once one has determined how best to provide for a charity, the final step is to be certain the charity is properly named and identified. Care needs to be taken because separate charities can have very similar names. In addition, charities can have national offices as well as local affiliates that are treated separately. While many national organizations and their local chapters have sharing arrangements, this is not always the case, and confusion and disputes can arise. Therefore, donors should be careful to properly identify the charity that is their intended beneficiary, particularly when the gift is embodied in a deathtime transfer and the donor is no longer available to provide clarification.

It is certainly true that a little extra attention at the outset can save substantial time and expense down the road.

1. The standard deduction in 2022, adjusted for inflation, for married couples is $25,900, up $800 from last year. Depending upon the other income tax deductions available to the taxpayer, charitable contributions may be fully or perhaps partially deductible.
2. Gifts at death to charity will be deductible to the extent the estate is subject to a federal estate tax. The federal estate tax exemption in 2022 is $12,060,000, and only taxable estates in excess of that amount will be subject to federal estate tax.

advantages of a revocable living trust

for residents of NJ

by Mary Patricia Magee, Esq.

It has been a routinely held belief among estate planners that a Revocable Living Trust is not necessary for New Jersey residents. The purpose of this article is to identify those situations in which a Revocable Living Trust can be beneficial for residents of New Jersey.

Most commonly, we hear that assets held in a Revocable Living Trust during one's lifetime, will, at the time of death, avoid probate. Fortunately for New Jersey residents, probate is not an onerous, time-consuming, or expensive prospect. The probate process in New Jersey, which gives legal significance to the will and clothes the executor with court-approved authority, is a straightforward process often costing less than $300 and requiring little paperwork. It takes about two to three weeks to obtain Letters Testamentary, which formally authorize the executor to transact business on behalf of the estate. Other reasons often cited as benefits of a Revocable Living Trust (RLT) are privacy regarding one's estate, and the elimination of death taxes. These reasons do not apply in New Jersey, because our probate process does not require an inventory disclosing estate assets, nor an accounting with the court listing estate income, expenses, and distributions to the beneficiaries. As for the assertion that RLTs save death taxes, this is simply not true, as all assets in an RLT are considered to be in the control of the grantor (the person who created the trust), and therefore includible in the grantor's taxable estate.

There are, however, circumstances where an RLT is appropriate for a New Jersey resident. For example, an RLT can be a better way to:

- allow for management of assets without the need to rely on the agent named in a durable power of attorney
- hold title to real estate in another state
- seamlessly handle the investment and distribution of assets after death
- provide lifetime trusts for family members

A comparison of powers of attorney to Revocable Living Trusts reveals many advantages to the RLT. A Revocable Living Trust is often a better way to handle the assets of someone who has become mentally incapacitated. Given the potential of potential of financial elder abuse, it can be difficult for the agent under a power of attorney to convince a bank to recognize the legitimacy of the agent, whereas trustees usually do not suffer the same kind of challenges.

When creating an RLT it is important that the trust be funded soon after it is signed. In the event of a crisis a funded RLT provides a smooth transition from the grantor as initial trustee to the successor trustee named in the trust document. Typical assets to be placed in the name of the RLT are bank and brokerage accounts. This author is of the opinion that New Jersey real estate can stay in the owner's name in case it is sold while the owner is alive and retirement accounts and annuities must stay in the owner's name to avoid adverse income tax consequences.

RLTs are also advisable when the plan creates a trust that will last beyond the current generation. While a trust for your spouse will usually not require a trustee change, a trust that will last for a child's lifetime means a trust that could last for 50 or more years. In that case, life events will often necessitate appointment of successor trustees. It is acknowledged that an appointment of a successor trustee can be accomplished in trusts created under a will (referred to as "testamentary trusts"). However the parties must go before the Surrogate's Court to formalize the resignation or removal of a currently serving trustee and secure the appointment of a successor trustee. The RLT, on the other hand, can provide an informal means for one trustee to resign or be removed, and the appointment of a successor, without the need to go to Court.

Ownership of real estate located outside of New Jersey is another indicator of the need for an RLT. Probate in states such as Florida and New York is not nearly so user friendly as in New Jersey. Under the laws of our country, generally, the disposition of real property is governed by the law of the state where it is located. So, a New Jersey estate owning a condo in Florida will necessitate Florida probate, which can be time-consuming and expensive. Therefore, when there is out-of-state property owned by a client, we often recommend use of a RLT in order to avoid probate in that state.

Lastly, a Revocable Living Trust is advantageous in New Jersey where the estate must obtain a tax waiver in order to fully distribute assets. It is acknowledged that the majority of NJ estates pass to a spouse, children or more remote descendants and, therefore, the tax waiver requirement for financial assets is replaced by a self-executing waiver, Form L-8, a quick and easy solution. However, where there are beneficiaries who will cause New Jersey inheritance tax, such as siblings, nieces and friends, commonly referred to as Class C or D beneficiaries, the Form L-8 will not suffice. In those cases, at least half of the accounts will be frozen until the tax returns are filed and the estate is audited. This can take many months. If, however, assets are held in a RLT and the grantor dies, tax waivers are not required, even when the estate passes to a Class D beneficiary.

Note that even when a RLT is advisable, a last will and testament should always be prepared as well. Sometimes a grantor has not transferred all assets to the RLT during life, or there are unforeseen or forgotten assets. In those cases, the will ensures that all assets are transferred to the RLT so that the estate plan expressed in the RLT will be carried out.

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