

## Planned Gifts With Near-Term Benefits

by Robert F. Sharpe, Jr.

America's lackluster economy in recent years has led to increased pressure on nonprofit organizations and institutions to generate the greatest amount of funding in the shortest period of time at the lowest possible cost. In light of that reality, those charged with raising funds for America's nonprofits may ask themselves, "How can we afford to invest limited resources in planned giving programs that may take years to produce results?" Some organizations have been tempted to devote nearly all their efforts to generating immediate gifts, sometimes at the exclusion of properly funding planned giving programs. This is understandable given the common misconception of the true scope of "planned giving."

In the common vernacular, planned gifts are typically thought of as gifts that are not received by nonprofits until the death of one or more persons. This is certainly the case when considering bequests, gift annuities, pooled income funds, gifts of real property with a retained life estate, and charitable remainder trusts that last for the life of one or more persons.

Helping donors effectively plan their charitable gifts is, however, a much broader activity that can and should result in gifts that are received immediately or in the near term. In fact, those programs that neglect the importance of helping donors plan such gifts do so at their peril.

Recall the definition of planned giving that is at the base of all of the services provided by the Sharpe Group:

*"A planned gift is any gift of any kind for any amount given for any purpose—operations, capital expansion, or endowment—whether given currently or deferred if the assistance of a professional staff person, qualified volunteer, or the donor's advisors is necessary to complete the gift. In addition, it includes any*



Don't miss "Major Gift Planning" December 4-5 in Tampa. See page 5 for more information about this and other Sharpe seminars.

*gift which is carefully considered by a donor in light of estate and financial plans."*

This definition was first published in *Give & Take* some 15 years ago and is today more relevant than ever. Skillful gift planning can result in gifts that are received now or over various periods of time and are ultimately used for any number of purposes.

### *Gifts not tied to life expectancy*

There are many planned gifts that are based on timing that is not tied to a beneficiary's life expectancy. The most common are outright gifts that involve property that requires the charitable recipient to interact cooperatively with donors and their advisors. This includes gifts of securities, real estate, life insurance policies, retirement assets, and other types of property that require specialized knowledge on the part of a development officer and/or a donor's advisor to complete the transaction. Such assets can produce significant gifts immediately.

It is important to remember that the larger a gift, the more likely it is to be made in a form other than cash. Wealthy persons do not become wealthy or remain wealthy by keeping large amounts in checking accounts. Experienced fund raisers know that organizations and institutions that are prepared to encourage and receive non-cash gifts raise significantly larger amounts than those that are not.

### Inside:

- Are gift planners exposing themselves to liability? p. 2
- Law school and the development officer p. 6



Is your  
gift planning  
program  
“secure”?

## Planning Matters

The Tax Reform Act of 1986 ushered in an era of changes in charitable gift planning not seen since the late 1960s. While few provisions of that tax act dealt directly with charitable gift planning, other changes such as large increases in capital gains tax and the elimination of many commonly used tax avoidance methods such as real estate tax shelters had an indirect, though substantial, impact on charitable gift planning activity.

Because it was still possible following the 1986 tax act to use charitable remainder trusts to diversify investments without payment of capital gains tax and to enjoy tax-free buildup of trust assets, many outside the nonprofit community who had previously had little or no interest in planned giving seized on what they perceived to be a powerful vehicle within which to hold investments.

This enthusiasm unfortunately resulted in situations where charitable gifts were openly promoted by for-profit planners and nonprofits alike as “tax shelters.” In some cases, for-profit planners were requesting finder’s fees, commissions, or other special compensation for delivering a planned gift to a charitable entity from a “donor” who otherwise had no interest in the work of that nonprofit. In those cases, the “donor” was primarily interested in tax benefits and the charitable remainder became “for sale” to any charity that would fund the cost of the planning that led to the creation of the trust.

These activities were quickly denounced by the nonprofit community, and newly created organizations such as the National Committee on Planned Giving adopted model standards of practice that denounced the payment of commissions or “finder’s fees” in the gift planning arena.

Even so, there was increasing concern that some of the marketing efforts of nonprofits were crossing the line from those appropriate for charitable gifts (generally exempt from federal and state securities registration) to those more standard for securities (subject to both federal and state scrutiny). Such efforts included communications that were heavily focused on various aspects of planned gifts such

as the growth potential in trusts, the amount of income payments from gift annuities as compared to other “investments,” and the tax-free nature of income from various plans.

In some cases, nonprofits and for-profits alike were taking liberties with descriptions of planning tools that could be interpreted as inaccurate representations of the workings of plans. Some wondered if a point could be reached when gift annuities and certain other gifts might be considered “securities” under federal and/or state law. If that were the case, the plans and the persons who marketed them could be subject to extensive regulation.

In August 1990, these concerns were addressed in a *Trusts and Estates* magazine article entitled “Is There ‘Security’ in Planned Giving?” This article concluded that security law as interpreted in published Securities and Exchange Commission (SEC) staff opinions could, in fact, be interpreted to restrict certain activities. The article concluded that the SEC would not, however, consider planned gifts to be securities so long as a number of conditions were met. These included the following:

1. The gift should be irrevocable and qualify as a charitable gift under federal tax law.
2. Charities should provide full and fair disclosure to each donor or prospective donor.
3. Only volunteers or persons employed in the overall fundraising activities of the charity should solicit gifts and no part of their compensation should be in the form of commissions or other compensation based on the amount of a gift.
4. The anti-fraud provisions of the law would continue to apply.

### *The Philanthropy Protection Act*

In the mid-1990s, a lawsuit was filed in Texas that claimed the planned giving activities of a charity had violated federal and state securities laws. The suit also included claims that the practice of recommending gift annuity rates by the American Council on Gift Annuities since 1927 violated the Sherman Antitrust Act. In response to this case, Congress enacted clarifying legislation in the form of the Philanthropy Protection Act of 1995, which gave statutory force to pre-existing S.E.C. guidelines and specifically amended the Investment Act of 1940, the Securities Exchange Act of 1934, and the Investment Advisors Act of 1940. A companion

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Other planning tools such as the charitable lead trust are increasingly being used by the wealthy to fund larger gifts in today's environment. As the "next step back" from an outright gift or a pledge over a period of time, a charitable lead trust allows a donor to set aside property for a period of time to fund a charitable gift, while underlying assets are ultimately returned to the donor or to others the donor determines. Because of the stream of funding devoted to charitable purposes before the underlying funds are received by heirs or returned to the donor, the lead trust can feature significant gift, estate, and income tax advantages.

Keep in mind also that charitable remainder unitrusts and annuity trusts need not last for the lifetime of the donor and/or other persons. Charitable remainder trusts can last for a fixed period of time of up to 20 years. Such trusts can play a vitally important role in coming years as baby boomers enter what have proven for older generations to be prime years for major gifts. Some of them will be able to make significant gifts on an outright basis, but a large number who delayed having children for a time, or find themselves supporting elderly parents, will find that the opportunity to make a gift today while retaining much needed income for a period of time will represent a welcome alternative to an outright gift.

A charitable remainder trust for a period of 10 years, for example, may be an acceptable alternative to a major current gift for middle-aged wealth holders with multiple economic responsibilities. This possibility expands the universe of those who can benefit from charitable remainder trusts from a group of relatively older persons to persons of any age who would like to make larger gifts but do not feel they can do so before first meeting other economic duties.

Charitable remainder trusts can be designed to last only for a term of years sufficient to fund educational expenses, can provide a temporary source of income as a "bridge" to retirement, or can last for a period of time believed sufficient to give children an economic boost in early adulthood.

### *Gifts for a lifetime*

One of the largest, and growing, sources of funding for America's nonprofit community is in the area of gifts received from bequests via wills and other gifts that take place only at the death of a donor. As previously reported in *Give & Take*, the percentage of individual gift income to higher education that resulted from bequests reached 25% in 2002, the highest percentage in over 20 years.

The key to maximizing gifts from bequests is to focus on the oldest segment of a constituency. Studies

of bequests at institutions that receive the highest percentage of income from this source show that wills that include bequests are executed, on average, by persons in their late seventies who live approximately four years beyond the time they execute the will containing the bequest. It is rare that these gifts will be made by persons who have not made multiple current gifts prior to deciding to include a charity in their estate. Wise gift planners will be particularly diligent in providing bequest information to long-term donors, even if none of the previous gifts was of any substantial amount.

The same is true of gift annuities and other life-income gifts. Based on our experience, the nationwide average age of persons who enter into gift annuities is approximately 75 years of age, a few years younger, on average, than the age of those who make wills that ultimately provide for a charitable bequest. It can be most economical, therefore, to concentrate marketing efforts aimed at promoting gifts of annuities to those 70 and older.

When considering plans to market gift annuities, however, it can be a mistake to limit all communications regarding gift annuities to older persons. The gift annuity can be an excellent way for a middle-aged person to make a large gift while also taking care of a parent. In this case, the younger person is the donor, but the expected time period until receipt of the gift is based on the life of an older individual.

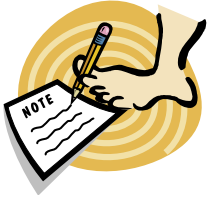
In a similar vein, it can sometimes be very helpful to broadly communicate the concept of charitable bequests via will and other long-range economic plans to persons of all ages. Why spend time and effort talking to a 40-year-old about a charitable bequest? Think for a moment. What are 40-year-olds telling you when they inform you that they have already included, or would consider including, your organization or institution in their will? When people include charities in their wills, there is no income tax deduction, no increase in income, no capital gain avoided, no estate tax saved for most. So why do they take this step—and what does it tell us about a person's level of donative intent?

Ironically, one of the best ways to discover prospective major donors among a broad mass of younger donors is to periodically give them an opportunity



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

## Footnotes



### *Encourage your donors to give this year-end*

September marks the official start of fall and the countdown to the end of the year. Before we know it, Thanksgiving and end-of-the-year holidays will be upon us. Don't risk having your fall appeals get lost in holiday mail or arrive too late for donors to take action.

Take time now to make the most of the philanthropic season. The sooner you remind your donors of the wisdom of careful year-end charitable gift planning, the earlier they can act. With a number of changes in tax laws this year, it is especially important that donors have the information they need to make their gifts most effectively.

1. If you haven't already done so, make plans to share information with your donors. Whether as the subject of a special mailing or as a P.S. in a regularly scheduled appeal, almost everyone can benefit from taking the time to consider how best to make their gifts.

2. If you mailed in November last year, consider a September or early October date this year. You'll beat the rush of holiday mail and give donors plenty of time to review their plans before the last minute. With recent upturns in securities markets, many donors will be taking a closer look at their portfolios and will need time to determine how they may balance investment decisions with their desire to give.

3. Review the enclosed samples of Sharpe's year-end giving brochures. You may also view Sharpe year-end publications at [www.sharpenet.com/yearend](http://www.sharpenet.com/yearend).


This year Sharpe has three brochures that have been carefully designed to help you communicate the benefits of year-end giving to your constituency. Select one, two, or all three, and use the enclosed order form to place your order.

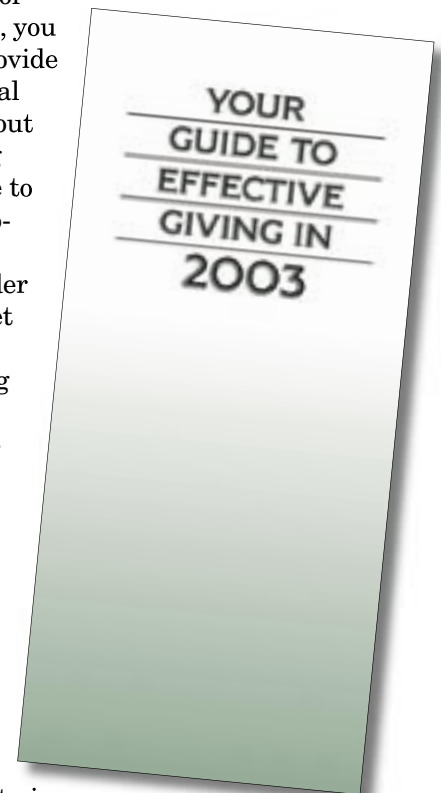
### *"Your Guide" also available*

For donors of larger amounts, you may wish to provide more substantial information about year-end giving than is possible to include in a brochure format.

If so, consider Sharpe's booklet "Your Guide to Effective Giving in 2003." Like all Sharpe publications, this booklet has been updated to reflect recent tax law changes. The booklet features helpful examples that show how donors can best give various types of property to maximize tax and other benefits. It also features an introduction to popular planned giving vehicles. From immediate gifts of cash or securities to deferred and split interest gifts, this booklet helps donors assess their options to choose a gift that will be mutually beneficial. For a copy of this booklet, call 1-800-238-3253 or see [www.sharpenet.com/yourguide](http://www.sharpenet.com/yourguide).

### *Don't delay*

We are happy to help you meet your goals this year-end. Call 1-800-238-3253 to speak to a Sharpe representative today. 



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News and ideas about Robert F. Sharpe and Company's services.

# Training Update

## *An Introduction to Planned Giving*

For a comprehensive, in-depth training experience, consider attending Sharpe's seminar "An Introduction to Planned Giving."

Presenters Timothy Sharpe, Barlow Mann, and other experts combine their experience to guide participants through the basics of charitable gift planning, from explanations of gift planning techniques, to organizing and implementing an effective gift planning program, to communicating benefits of more effective charitable gift planning in the most efficient manner for your constituency.

Empower yourself with a wealth of gift planning knowledge that your donors will appreciate and will help your organization or institution benefit from the unprecedented intergenerational wealth transfer that is now on the horizon. This seminar is especially helpful for those who are planning to specialize in planned giving or have multiple responsibilities that include incorporating gift planning capabilities into other development efforts.

## *Managing Planned Giving Relationships*

Someone has asked for information about a planned gift. What is the next step? How do you use the telephone, written correspondence, personal visits, and other communications in ways that are appropriate, tasteful, and effective?

These and other topics will be explored in a new seminar devoted to the process of developing and managing effective planned gift relationships. Beginning with how to handle initial requests for information, this seminar will also focus on what to do before, during, and after a personal visit.

Also included is an exploration of various ways to work most effectively with donors' advisors to help complete planned gifts.

Special attention will also be given to the process of building and maintaining relationships with the heirs of benefactors after a legacy has been received.

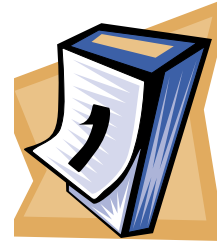
Presenters with decades of combined experience will share their insights regarding ways to build meaningful relationships, including helpful case studies and demonstrations of successful techniques.

Designed to complement "An Introduction to Planned Giving," this one and one-half day session follows that seminar in selected cities. Special tuition rates are available for concurrent attendance or for prior attendees of "An Introduction to Planned Giving."

## *Major Gift Planning*

In two concentrated, information-packed days, presenters Robert F. Sharpe, Jr., and Jonathan G. Tidd, Esq., address issues of vital importance to those charged with structuring major gifts to their organizations. By linking their knowledge and over 40 years of combined experience, Sharpe and Tidd lead participants who possess a basic understanding of gift planning tools through a comprehensive training experience designed to help them best utilize their skills in today's environment. Registration is limited to allow for more interaction among participants and instructors. *G&T*

Multiple registration discounts are available. For more information or to register, please contact the Sharpe company.  
Phone 1-800-238-3253, ext. 5360  
Fax 901-761-4268  
Web site: [www.sharpenet.com](http://www.sharpenet.com)  
E-mail: [seminars@rfsco.com](mailto:seminars@rfsco.com)



## Seminar Training Dates

**An Introduction to Planned Giving**  
Washington, D.C.  
September 4-5  
Orlando  
November 17-18

**Managing Planned Giving Relationships**  
Orlando  
November 19-20

**Major Gift Planning**  
Phoenix  
September 8-9  
St. Petersburg, FL  
December 4-5



Go back to school with Sharpe this September in Phoenix.

# Do I Really Need to Go to Law School?

## A Development Officer's Perspective

*Editor's note: Christine Sturm Kirk is a full-time law student at the University of Memphis School of Law and a part-time editorial staff member at The Sharpe Group. Before entering law school, Christine worked in nonprofit development and public relations for more than 10 years, including positions at the American University, The National Center for Children and Families, and the Baddour Center.*

Two and a half years ago, my husband and I both decided to pursue major changes in our careers. For me, the decision was to take a hiatus from my work as a nonprofit development officer and return to the life of a student. I had worked in nonprofit development and administration for more than 10 years and had always considered it a privilege to serve my community and work in a profession that I loved. Still, I had been considering attending law school for several years, and, with some all-too-serious doubts lingering in the back of my mind, I resigned from my position as Director of Development and entered the law school class of 2004.

### *Back to school*

Some people claim that they have always known that they wanted to be a lawyer. I am not one of those people. The decision to attend law school was a long, gradual process for me. During my career as a development officer, I, like many in the development field, found myself spending more and more time with donors who were not only interested in making immediate, outright gifts to their charitable interests, but also wanted to make gifts as part of their long-range financial and estate planning. As a result, I also spent more and more time meeting with donors' attorneys and learning about charitable giving techniques and related tax law issues.

My interactions with estate planning attorneys who had little knowledge of charitable giving and seemingly less interest in philanthropic purposes frustrated me. I began to think that maybe I could serve donors better as an attorney than I could as a development officer.

### *Lessons learned*

Now entering my third, and final, year of law school, I can honestly say I have enjoyed law school and will never regret the time and other resources I have invested in this endeavor. Law school is intellectually stimulating, personally challenging, and a nice change of pace from working 70-80 hour weeks! In law school I have been able to hone my oral and writ-

ten communication skills, become more methodical in solving problems, and become a more effective advocate for people and causes in which I believe. As a result of the law school experience, I feel I will be better equipped in some ways to serve donors with their gift planning needs than before.

On the other hand, I have also learned that law school should not be considered as a prerequisite for success in planned giving or other aspects of nonprofit development work. Law school will not necessarily help me become a better development officer. Development work is first and foremost a "people business." While many lawyers enjoy working with people and helping people through significant events in their lives, law school does not really prepare anyone to be a good listener, an empathetic friend, or a thoughtful advisor. No amount of technical understanding garnered in law school can compensate for an inability to understand and empathize with the needs and concerns of donors.

Development officers, like lawyers, must be comfortable speaking with people about what may be very personal and confidential matters—such as family relationships, finances, and their own mortality.

Development officers should be at least somewhat familiar with the basic legal implications of those matters, but it is far more important to understand the personal needs, desires, and goals of donors. Law school cannot and does not teach you those skills. That comes with practice and is built on personal satisfaction derived from helping people make gifts as they also meet significant and sometimes difficult challenges in their lives.

In the end, I believe that my legal education will make me a better, more competent, and more capable development officer. But I have also come to believe that a legal education is not necessary to be successful in major and planned gift development. If anything, I believe that prior experience as a development officer may ultimately help practicing attorneys be more service oriented, empathetic, and better able to articulate complex matters in a readily understandable way. I am also finding that the two career paths are remarkably similar—exciting, meaningful, and rewarding—and I look forward to using what I have learned over the past three years to help nonprofits and their donors meet their goals in mutually rewarding ways. [G&T](#)

## Planning Matters...Continued from page 2

bill also amended antitrust laws to exempt the activities of the American Council on Gift Annuities in recommending rates.

Thus, under current law, it is unquestioned that certain planned gifts are treated as securities under federal law. These gifts include gift annuities, pooled income funds, and charitable remainder trusts where funds are commingled. These gifts are, however, exempt from registration, and those who work with donors need not be registered investment advisors so long as conditions are met that are much the same as those the S.E.C. had set out in the past. Under this act, donors are to be given full and fair disclosure of how gifts work, the gifts must be marketed by volunteers or those otherwise engaged by the charity, and no one can be paid commissions. In addition, anti-fraud provisions would continue to apply.

As the activities of most charities were already in compliance with these conditions, the passage of the Philanthropy Protection Act had little practical impact other than for charities to carefully review their compensation policies and their marketing materials to ensure they were accurate and did not misstate the workings of plans.

It is now generally accepted that the required disclosure may be in the form of a detailed letter or professionally prepared printed materials that accompany gift proposals. Material misrepresentations or omissions may give rise to liability under the antifraud provisions of the securities law or may subject your program to full-blown securities registration.

For example, in one case an institution gave a donor information on the amount of the tax deduction he could

expect from a particular gift. The charity failed to add that there may be limitations in the amount that could be deducted. The donor was not able to use the full deduction and threatened action under anti-fraud provisions of federal securities law if the charity did not return the gift annuity funds. The charity refunded the money even though they had intended no harm. It was not anything they "said" that gave rise to the problem; it was what they "didn't say."

### Better safe

At least annually, and more often if circumstances dictate, all internally or externally prepared planned gift marketing materials should be reviewed for completeness and accuracy and updated as necessary. Such actions are prudent and necessary given today's regulatory and legal environment. Make sure that any materials that have been purchased in past years for this purpose are up-to-date versions.

Securities laws as they affect planned giving should not be feared or give rise to undue concerns. It is important to remember that these laws were enacted not just to protect the public but also to protect charities from those who would commercialize and distort the underlying purpose of the charitable gift planning tools that are so vital to the continued financial health of the nonprofit community. [G&T](#)

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At least annually, and more often if circumstances dictate, all disclosure materials should be reviewed for completeness and accuracy and updated as necessary.



## Near-Term Benefits...Continued from page 3

to let you know they have decided to elevate a charitable interest to the level of a family member by including it in their estate plans. Finding such persons as they are entering their economic prime may be the first step in developing a new generation of major current donors from among the ranks of the baby boomers.

### Out of the box

Those that succeed in coming months and years will be those that "think out of the box." That means disconnecting from the notion that "planned gifts" are for the "old" or that "planned gifts" are for the "rich." Some programs emphasize gifts for the "old" at the expense of the "rich" while others overemphasize planning for gifts from the "rich" and don't properly serve the "old." And in all too many cases the young are completely neglected

and some of the largest gifts that could otherwise be received then fall between the crack that may then exist between "planned" and "major" giving. Those that succeed in maximizing the funding for their organizations and institutions in coming years will be those that understand that larger gifts, whether from the young or the old, will increasingly be enjoyed by those organizations that take steps to make sure they help their donors make gifts of the right property in the right amount at the right point in their lives. [G&T](#)

*This article is based on session 9, "Planned Gifts With Near-Term Benefits," featured in the popular Sharpe seminar "Major Gift Planning." See page 5 for upcoming dates and locations.*

# *The Missing Piece*

Looking for the perfect way to complete your gift planning efforts? Whether you're just starting out in development or simply feel that the time has come for a refresher course, there is a Sharpe seminar designed to fit your needs.

Sharpe seminars offer innovative ideas to help you make the most of your fund-raising opportunities. See page 5 for a detailed explanation of each seminar. For more information or to reserve your place, visit [www.sharpenet.com](http://www.sharpenet.com) or call 1-800-238-3253 to speak with a customer service representative.

## *An Introduction to Planned Giving*

Washington, D.C.  
September 4-5

Orlando  
November 17-18

## *Managing Planned Giving Relationships*

Orlando  
November 19-20

## *Major Gift Planning*

Phoenix  
September 8-9

St. Petersburg, FL  
December 4-5



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