

Give & Take

News and Ideas for Development Executives of Nonprofit Organizations

Do's and Don'ts of Detecting Diminished Capacity

For those in the gift planning field, working with older individuals just comes with the territory, and helping older donors plan their charitable gifts is all in a day's work.

At times, however, gift planners may find it necessary to determine whether a donor is mentally capable of completing a gift that involves the irrevocable transfer of assets in what may be a relatively complex transaction. Others involved in the gift planning process, such as the donor's attorney, financial advisor, and family members, may be able to help assess a donor's capacity. In some cases, however, these parties may not be accessible and the gift planner must determine whether to proceed with a particular gift when a donor's mental competency is in question.

Case in point

Take the following real world fact pattern and consider the challenges presented. A woman, age 77, calls and asks to meet with you. She visits your office and after preliminary discussions says that she has been rethinking her estate plans and would like to leave her entire estate to your organization.

Upon further discussion she says that she had previously planned to leave everything to her niece, but her niece has taken several very expensive vacations in the course of a year. She says that she considers this a waste of money, and she doesn't want her money to one day be spent in a similar fashion. She says that she trusts that her money will be better used for charitable purposes of your organization.

On one hand, what the donor would like to do may be entirely rational. But in this case, others on the staff



Join The Sharpe Group in sunny Orlando this May for the seminar "Major Gift Planning." See page 3 or www.sharpenet.com/seminars for details.

Orlando/Orange County Convention & Visitors Bureau, Inc.

of the organization happen to know that the donor had changed her plans for her entire estate on several other occasions in the past and that the donor had previously been hospitalized for substance abuse. What should be done in this situation?

While development officers are certainly not expected to replace psychologists when it comes to professionally analyzing older persons' judgment or mental state, a few general guidelines are helpful to keep in mind when it comes to assessing someone's capacity to complete a thoughtful and purposeful major or current or deferred gift.

The Do's

Do meet and/or talk with a donor multiple times.

Why: By interacting with a potential donor repeatedly, you begin to notice a donor's behavior patterns. In your notes from each visit, you will establish a baseline of what is normal behavior for a particular donor, and any sudden changes in a donor's mental state will become more obvious as a result.

Visits with a donor also become an opportunity for you to evaluate the donor's memory skills. For example, in your conversation you can ask the donor to paraphrase the gift plan he or she is considering. If

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- Survey provides information on planned gift donors p.4

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Enron, WorldCom, and You



Will Sarbanes-Oxley put your board under a microscope?

In recent months, the legal proceedings surrounding the collapses of Enron and WorldCom have once again been in the news as trials are underway for former executives charged in connection with past dealings. While these cases serve as a chilling reminder of the excesses and scandals associated with corporate America, what relevance might they have for those who work or volunteer in the nonprofit sector?

Playing by new rules

Highly publicized cases such as the Enron matter led to the enactment of what has come to be known as the Sarbanes-Oxley legislation in 2002. Congress enacted this legislation to help curtail or eliminate certain activities on the part of boards and management of publicly traded for-profit businesses. This legislation calls for greater accountability, transparency, and board oversight, and makes failure to comply with certain provisions of the law a criminal offense.

Since Sarbanes-Oxley was enacted, America's corporate community has undergone a series of reforms affecting their boards, executives, employees, accountants, and attorneys and other advisors. Remember Arthur Andersen? One of the nation's leading accounting firms was a casualty of the Enron scandal—28,000 employees and partners were displaced when Arthur Andersen was forced to close its doors in 2002.

How nonprofits fit in

If the Sarbanes-Oxley legislation focused primarily on publicly traded corporations, why should the nonprofit community be interested in its provisions? Actually, there are a number of reasons why you should be familiar with this legislation.

First, nonprofit boards frequently include corporate executives, board members, attorneys, accountants, and investment advisors who have been affected in their for-profit roles by the provisions of the law and expect well-run organizations—whether for-profit or nonprofit—to comply with the spirit if not the letter of Sarbanes-Oxley provisions.

Second, both federal and state governments are now visibly concerned about abuses within the charitable community. At the federal level, there have been congressional hearings on

allegedly improper activities within the nonprofit sector. At a recent national meeting of state attorneys general the topic was high on the agenda.


Unfortunately, the charitable community has seen its fair share of abuses and scandals in recent years. Officials have questioned some museums about following donors' restrictions on gifts or acquiring works of art or antiquities with little regard to their origin. Other charities have taken part in programs that have systematically encouraged non-cash gifts in which the property's value has been inflated. These gifts have involved real estate, conservation easements, patents, and automobiles. Some charities have participated in transactions that are primarily designed to benefit non-charitable entities such as investors or insurance companies.

Instances of excessive compensation have also been reported. For example, a foundation board that was questioned about unreasonable compensation for trustees responded by raising the board compensation from \$600,000 to \$1 million per year. In another case, a nonprofit executive literally gambled away the organization's gift annuity reserves in Las Vegas.

Ethical and legal lapses continue to be identified in the nonprofit sector with some regularity. Even though such cases are relatively rare given the sheer number of charities in the United States, they nonetheless should serve as a "wake-up call" for nonprofits in general to put their affairs in order.

What areas should be of concern?

While the provisions of Sarbanes-Oxley are extensive and complex, the general thrust is to provide stronger board governance and oversight in order to avoid financial and ethical problems. Among other measures, charities should make sure that their boards have the financial expertise and independence to provide proper governance. There should be policies in place to deal with potential conflicts of interest, and to make sure that executive compensation and fees paid to those associated with board members are not excessive. Consider establishing a formal audit committee and periodically change your accounting firms.

Charities that address these issues on their own are more likely to avoid potential problems than those that ignore them, or continue questionable practices. Steps are now well underway at the federal and state levels that may ultimately result in the enactment of statutes and regulations in the Sarbanes-Oxley vein. Now may be the time to anticipate these actions and take steps today to assure that your organization is "ahead of the curve" in this area. 

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Editor:
Elizabeth H. Smithers

Design:
Marianne McHann

Sharpe Seminar Series

Featured Seminar: Major Gift Planning

One of the more popular seminars in the Sharpe seminar series, Major Gift Planning will be offered in Orlando in May.

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](#)



On the Agenda for 'Major Gift Planning'

Day One

- The Role of Effective Gift Planning in a Comprehensive Fund Development Program
- An Overview of Current and Deferred Gift Planning Techniques
- The Role of Tax and Other Financial Considerations in Planning Major Gifts
- Understanding the Gift Potential in Properties Donors Own
- Maximizing Income From Bequests, Life Insurance, and Retirement Plans
- Integrating Charitable Gifts Into the Overall Estate Plan

Day Two

- Examining the Role of Deferred Gifts in Capital Campaigns
- Case Studies: How Gift Plans Can Help Donors Meet Personal Planning Obligations
- Deferred Gifts With Near-Term Benefits
- Understanding Planned Gift Marketing Regulation
- A Targeted Approach to Communicating Benefits of Gift Planning to Donors
- How to Work Successfully With Donors' Professional Advisors

See www.sharpenet.com/seminars for a complete agenda and dates for this and other Sharpe seminars.

What Attendees Are Saying About 'Major Gift Planning'

"I always learn something new."

—Marty Matula, Morton Plant Mease, Clearwater, FL

"Demanding, thorough, well-organized, and stimulating. These two days will directly affect my job performance."

—Susan Cleverdon, Beloit College, Beloit, WI

"One of the best seminars I have ever attended. Thanks so much!"

—Robiaun Charles, University of Evansville, Evansville, IN

"It was a great 'refresher' course that will help us rethink our approach."

—Fred Stecker, Muscular Dystrophy Association, Tucson, AZ

Upcoming Seminar Training Dates

An Introduction to Planned Giving

Chicago/Oak Brook

April 18-19

Boston

June 12-13

Managing Planned Giving Relationships

Chicago/Oak Brook

April 20-21

New York

August 23-24

Major Gift Planning

Orlando

May 11-12

Philanthropy in Times of Change

Boston

August 3-4

Multiple registration discounts are available. For more information or to register, please contact The Sharpe Group. Phone 1-800-238-3253, ext. 5360 Fax 901-761-4268 Web site: www.sharpenet.com E-mail: seminars@sharpenet.com

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the donor has trouble relating the basics of a gift annuity agreement he or she has been discussing with you over the last two months, for example, this may be a signal to you to involve the donor's attorney or other trusted advisors before moving forward with the gift.

In the example discussed earlier, the donor may very well change her mind if a follow-up meeting were scheduled. Even still, a gift uncompleted is more desirable to the professional development officer and the reputable nonprofit he or she represents than a gift completed under dubious circumstances.

Do visit with the donor in more than one setting if possible.

Why: While meeting with a donor in your office or at a restaurant may be the most convenient option for you, sometimes navigating the way to your office or other chosen locale can leave a donor stressed and potentially disoriented—especially if he or she has gotten lost en route to meet with you. The act of simply getting to the meeting may tire an older donor, and once arrived, he or she may not be able to focus on the complexities of planning a gift. What may at first appear to be a lack of judgment or cognitive skills could be the result of fatigue and stress.

Planning a meeting at the donor's home may be a welcome alternative because the donor will be in comfortable, familiar surroundings and won't have to worry about making a special trip outside the home. Let donors suggest meeting at a time of day when their energy levels are at their peak and they feel at their best.

In addition, a meeting at the donor's home may offer you further insight into his or her level of functioning. For example, you may find out whether the donor still cooks, does housework, or pays the bills. While certain physical deficits may cause a donor to need assistance in these areas and most often have nothing to do with decision-making skills, development professionals may find the additional information they discover by visiting the donor in his or her own home invaluable as they establish a well-informed understanding of the donor's general mental state.

Do involve others where possible.

Why: In many cases it is advisable to attempt to contact family members or a donor's advisors. This can present issues, however, if you are not given permission to do so by the donor. In correspondence with donors it may be prudent to suggest that they might wish to involve family members or advisors in a future meeting to discuss a gift.

In our example, contacting the donor's advisor to discuss the details of her gift might have been wise.

In fact, that's exactly what happened. The attorney indicated that the donor was suffering from a chronic mental illness and was not in a position to complete the anticipated gift.

The Don'ts

Don't be "ageist."

Why: Don't let some of the "symptoms" of aging mislead you. Hearing and vision loss, as well as slower reaction times, are common to the aging process. These diminished functions are not necessarily indicative of diminished mental facility. Additionally, a donor who may seem grouchy or uncooperative does not necessarily lack the capacity to make decision—nor does it mean the donor isn't happy to be making the gift!

Development professionals should note that older persons who remain physically and mentally active are less likely to experience memory loss as they age. Studies have also shown that those seniors who have positive outlooks on life and feel involved in the care of future generations are psychologically healthier than those who don't.

Since gift planning revolves around helping donors leave a legacy for future good works through their gifts, the older donors you work with will most likely already fit into this category. Donors who want to make planned gifts have embraced the fact that their lives and their gifts will make a difference for others in need in future years. Their positive attitudes just might keep them "younger" and more mentally "fit" as they age.

Be sure to focus on whether or not the donor seems able to make clear, reasoned decisions rather than the temporary forgetfulness that can sometimes affect even the young and sharp-witted.

Don't base a judgment solely on temporary circumstances.

Why: Like any person of any age, older donors often experience particular temporary conditions that can affect their decision-making capacity. Recent events like the death of a spouse can cause stress, grief, and depression, all of which affect one's ability to make clear judgments. Certain reversible medical conditions, oftentimes related to reactions to medications, can also affect the cognitive skills of seniors.

Whatever the cause, if you notice signs of diminished capacity, you may need to wait until the donor's capacity is restored before pursuing further discussion of gift planning. Oftentimes a donor's normal functioning will return once the stressful time has passed or the medical conditions have improved. Only after the donor has regained his or her capabilities is it advisable to resume working on planning gifts.

New Planned Giving Survey Released

It has been six years since the National Committee on Planned Giving (NCPG) released its last national survey of planned giving donors in 2000. That survey contained a wealth of information about the motivations and characteristics of these special donors.

A new regional survey conducted by the Toledo Area Planned Giving Council provides additional insights about planned gift donors living in northwest Ohio. The surveyed groups were over 35 years old with incomes greater than \$75,000. In spite of geographic and demographic limitations, these survey results provide an updated view of one subset of planned giving prospects and donors.

Breakdown of participants

The groups surveyed were divided by age and income levels. The age and wealth levels examined included those between the ages of 35 and 54 and over 55 and those with incomes between \$75,000 and \$150,000 and over \$150,000. One hundred respondents were interviewed in each group.

Survey Groups		
	YOUNGER (35-54)	OLDER (55+)
Upper Income	\$150K +	\$150K +
Middle Income	\$75K-\$150K	\$75K-\$150K

Highlights of the findings

While the survey results yield a great deal of pertinent information, the following six insights reveal specifics about planned gift donors that may be especially useful for gift planning professionals:

1. The top two reasons for making a planned gift to an organization are a belief in the mission and work of the charity and a long-term relationship with the organization or institution. Tax advantages ranked 11 out of 13 reasons/motivations for making a planned gift. This reaffirms earlier survey results that showed belief in a cause and a close relationship meant most to donors, with tax benefits trailing toward the bottom of the list of motivating factors. As the federal estate tax is being gradually eliminated over time, this data tends to confirm that bequests and other planned gifts should not be greatly affected by this change.

2. Respondents identified charitable bequests by will as the most well-known type of planned gift (90%), followed by charitable remainder trusts (78%), and gift annuities (69%). Only about half the respondents were familiar with a way to make gifts involving retirement plans or life insurance. This may

indicate a need to place more emphasis on these methods of making gifts as part of one's estate plans.

3. While over 90% of the respondents made annual gifts to charity currently, only 14% of respondents indicated that they had included estate provisions for charities. This finding is in keeping with IRS data that indicated that 18-20% of those with taxable estates leave funds to charity. The wide gap between current and deferred gift support represents an opportunity for gift planners to promote planned gifts.

4. Traditional "snail mail" was sited as the preferred way to be asked to make a planned gift. While we all live in an age of increasing internet usage, this finding may confirm what we already know. The amount of email is expanding exponentially and many would prefer to limit this form of communication to personal and business messages rather than unsolicited email seeking them to take a particular action. Traditional mail is a relatively inexpensive way to communicate to a large group of prospects on a constant basis. Regular communications over time has been a proven way to inform, educate, and motivate older long-term donors about planned gifts.

5. The survey also found that younger persons, including those in their forties, would include nonprofit organizations in their estate plans. While it is important to control the amount and timing of planned gift communications depending on age, wealth, and other factors, this information confirms that younger persons should at least occasionally be exposed to the concept of charitable bequests and other age-appropriate ways to make planned gifts. Perhaps an annual or semi-annual sweep of a larger pool of prospects should be considered.

6. Of those who have included charities in their long-range plans, only about one in five or six will notify the charity in advance. Many seasoned development officers have learned this through experience. Even though planned gift societies were mentioned as important by only 15% of the respondents, they do allow a mechanism for identifying planned gift donors and thanking those who want that type of recognition (see page 2 of the March 2006 issue of *Give & Take*).

Final analysis

The new survey supports the findings of the NCPG 2000 survey of donors which found that the primary motivations for making a planned gift were the specific charity and the work or mission of the charity, and that tax and other motivations tended to be of a secondary nature; charitable bequests are still the most widely

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A challenge and a joy

Because of age alone, working with an 85-year-old donor who wants to plan a gift presents a different challenge than completing a gift with a 50-year-old. Making sure the donor is mentally capable of making a gift is more likely to come into play when dealing with the older donor.

Documenting capacity is important not only for yourself and your organization, should the gift ever be contested in the future, but also for the donor. Sometimes a donor is intentionally reducing the amount left to family members and close friends in order to make what he or she views as a “gift of a lifetime.” By having records of your visits and conversations, you protect not only your organization’s interests, but you also protect the wishes of donors and their desire to make a difference in the world through their gifts.

When you feel there is any question about a particular donor’s decision-making capacity, consider whether to get the donor’s attorneys, family, other advisors, or physicians involved. If appropriate, you may want to contact a family member or advisor to whom you have already been introduced. In any event, it is wise to have policies and procedures in place so that you know what steps you should take in these situations.

Assisting older donors in completing planned gifts is a joy and a privilege. As a planned giving professional, the satisfaction you glean from helping a donor successfully achieve multiple goals while also procuring valuable support for your organization is well worth the challenges you encounter along the way. [G&T](#)

Editor’s note: The preceding article is partially excerpted from Session VI of “Managing Planned Giving Relationships.” See page 3 for more information and upcoming dates.

Newsletters Engage, Inform Most Committed Donors

Informative newsletters on specific gift planning topics have become a regular part of many successful development programs because they provide a convenient means to educate donors about your organization, its donors, and the benefits of useful gift planning options.

Take a look at how newsletters can work for you and your donors:

1. In a recent survey of planned gift donors (see page 5), the favored way for donors and prospects to learn more about planned gift opportunities is through the mail. **The newsletter format allows you to reach a targeted group of committed constituents in an economical and—as we have now learned—preferred way.** Newsletters can inform readers about the practical aspects of specific gift plans, and engage their emotions through articles that feature testimonials from current planned gift donors. Remember that newsletters can also be posted on your Web site for those who prefer to download.
2. **The newsletter format offers special opportunities for unique, personalization options in both design and copy.** Mission-related photographs can be included along with pictures of featured donors. Sharpe has a
- number of design formats to choose from, or our creative team of designers and writers can work with you to create a look and feel that is all your own. From designing a one-of-a-kind masthead to writing personalized gift planning copy and more, The Sharpe Group has worked with hundreds of organizations to produce newsletters that resonate with donors and produce results. Sharpe designers are sensitive that some may wish to download and print newsletters, and recipients may be reluctant to print designs that overly tax color reservoirs on printers.
3. **Newsletters offer you a way to stay on your donors’ minds on a consistent basis.** Since you never know when your constituents may update their will, have excess retirement income, or want to increase their income from low-yielding securities, you must reach out to them consistently with gift planning information on a variety of subjects. Newsletter initiatives provide a way for you to relay your message on a recurring basis to those most likely to be considering their long-range and financial plans. When the time is right, you want your donors to have the information they need to act on their donative intention. [G&T](#)

Footnotes

Newsletters educate, motivate donors

If you would like to provide your donors with a thorough publication about gift planning options, The Sharpe Group's newsletter service may fit well with your gift development communication efforts.

Featuring up-to-date articles and unique design elements, each newsletter is attractive and easy to read. Subject matter is designed to address a broad range of gift planning opportunities for donors of various ages and wealth levels.

You may choose the format, subjects, and number of mailings that work best for your organization's mission. You may also decide to completely customize both the design and text of the newsletter to fit your unique needs and/or design standards. Please call to talk with a Sharpe representative about the customization level you have in mind.

As always, Sharpe representatives are also available to help you determine which topics may work best for your constituency, how many donors you may want to reach with each newsletter mailing, as well as how many exposures per year may help you achieve maximum results.

To review the extensive list of Sharpe newsletter topics currently available, please see our Web site at www.sharpenet.com/pubs and click on "Newsletters." For more information or to place an order for newsletters that help donors understand specific gift planning options, call 1-800-238-3253.

Survey *...Continued from page 5*

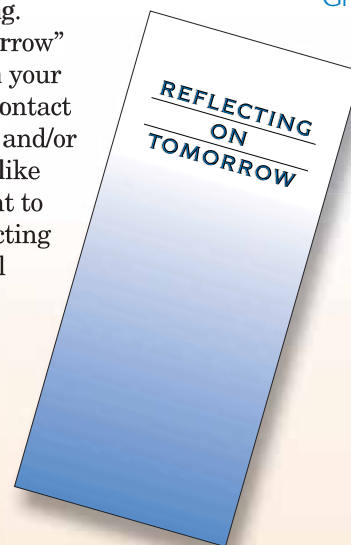
understood planned gift, but there is a growing awareness of other options; mail still seems to be the preferred way for donors to be asked and thanked for planned gifts; and a growing number of younger persons are considering this type of activity. With longer life expectancies and lower rates of mortality, the amount of time and resources devoted to promoting planned gifts to 35- to 55-year-olds should continue to be relatively limited.

Overall, the survey results are helpful and provide additional guidance for those responsible for encouraging planned gifts. [G&T](#)

Help donors "reflect" on giving

The popular Sharpe booklet "Reflecting on Tomorrow" explains a variety of gift plans in a user-friendly way. Helpful examples accompany the descriptions of each gift plan so readers can understand the benefits available to them. "Reflecting" is designed to be used as an insert in targeted gift planning communications and/or as a follow-up piece for those who have indicated an interest in planned giving.

"Reflecting on Tomorrow" can be personalized with your organization's logo and contact information on the front and/or back cover. If you would like more information or want to place an order for "Reflecting on Tomorrow," please call 1-800-238-3253. [G&T](#)



News and ideas about The Sharpe Group's services.

Maximize This Year's Budget

The Sharpe Group's flexible billing options help you make the most of your budget dollars. If your fiscal year ends June 30, consider using flexible billing options to:

- Use this year's funds to purchase training, consulting, or materials you will need to help you fulfill next year's goals.
- Postpone billing of materials and services you need now until next year's funds become available.
- Split billing between two fiscal years.

To learn more about Sharpe's flexible billing methods, call 1-800-238-3253. [G&T](#)

Gift Plans (gift planz) *n.* 1. Various methods for contributing funds to nonprofit organizations and institutions. 2. See “Chartered Giving Plans.”

Are you looking for a way to describe many of the most popular gift plans to your donors and advisors in your community? Check out “Chartered Giving Plans.”



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- Describes 7 well-known gift planning arrangements, including gift annuities and gifts by will
- Unique map-like design allows for comparisons of gift plans at a glance
- Features tax implications and income possibilities of particular gifts
- Useful to donors and gift planners alike

Make sure your donors, and their advisors, know about the variety of giving options that are available to them. Let “Chartered Giving Plans” help.

Call 1-800-238-3253 for more information about “Chartered Giving Plans” or visit www.sharpenet.com/pubs.



6410 Poplar Avenue, Suite 700, Memphis, TN 38119
1-800-238-3253 • Fax: (901) 761-4268
www.sharpenet.com