

Give & Take™

News and Ideas for Development Executives of Nonprofit Organizations

Nuts and Bolts of Estate Administration: Part II

by Triena Stecks

Last month we explored some of the basic issues in opening a charitable estate administration and a number of things you should consider at the beginning of the process. This article will deal with some of the more complex questions and situations that you may encounter during the course of the administration.

Should you hire an attorney to represent you?

This is an important question and one that you should consider in light of many factors. As soon as possible, you need to determine if there are issues for which it appears you will need legal representation. Hiring an attorney for every estate is certainly not necessary and that practice can result in a great deal of unnecessary expense. So, it is important that you carefully consider when it is prudent to obtain legal representation.

It is difficult to generalize on the types of issues that would require the expense of outside counsel. Whenever you are faced with a will contest, you should in most cases retain the services of counsel in the state where the estate is being administered. A will contest often comes about when someone not named in the will considers themselves to be entitled to a portion of the estate. This can be a relative, or someone who was under contract and is owed money from the deceased, or someone who asserts an equitable claim (e.g., someone has performed personal services and feels they are owed funds from the estate as payment for these services). In other cases, someone may decide to challenge the validity of a will based on the mental capacity of the donor.

If the will contest involves a relative, it could be a child or grandchild, or it could even be a more distant relative such as a grandniece or nephew. Oftentimes the relatives have no idea how much money “Aunt Mary” had until she passes away and the assets begin to be collected. Why is



Photo credit: Chicago Convention & Tourism Bureau

Join The Sharpe Group in the Chicago area for its popular training seminar “Major Gift Planning.” See page 3 for more information.

this so common? Because many of the people who leave a great deal of money to charities are truly those “millionaires next door” that many of us have encountered in the course of our work. These people have been very frugal during their lifetime. They usually inherited nothing from their parents, but managed to accumulate a large estate over a long period of time by habitually saving and living beneath their means. No one knows they have wealth because they drive old cars and have lived in the same small house for 40 years. Once it becomes known that they accumulated a sizable estate, then some relatives may suddenly feel “entitled” to a share of the estate even though it may have been years since there was any contact between those persons and the deceased!

Example: I know of one couple who have 14 children between them. They both worked for the U.S. Postal Service all their lives. They’ve lived in the same two-bedroom house in a working class neighborhood for many years. They do not believe in leaving their children money through their estates. They have told me that they believe

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CRTs by the Numbers

by Barlow T. Mann



Presenting updated data on CRTs.

Give & Take:

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After the Tax Reform Act of 1969, development executives sought to master the nuances of “qualified” charitable remainder trusts for the benefit of donors and the charitable organizations and institutions they wished to support. The '69 Tax Act created a special category of charitable remainder trusts that would qualify for favorable tax treatment under specific provisions of the Internal Revenue Code and Regulations. While charitable trusts in other forms had been around for centuries, these new variations, named the Charitable Remainder Annuity Trust (CRAT) and Unitrust (CRUT), were codified as part of the Internal Revenue Code.

These new tax-exempt trusts would make annual payments to an individual(s) before eventually benefiting one or more charitable organizations. The payments could be fixed (CRATs) or variable (CRUTs) depending upon the type of trust selected. The donor funding the CRT would also be entitled to an income tax deduction based upon the value of the charitable gift calculated according to IRS rules. Because the trusts were tax-exempt, they could be funded with appreciated assets that could be sold and reinvested in a diversified manner with no capital gains due at the time of the sale. Payments received from these trusts were then taxed depending on the nature of the income. It was possible to receive portions of the payments free of tax or taxed at lower rates than would be paid on other sources of income.

In the post-Tax Reform Act of 1969 period, many nonprofits began to hire specialists to handle these trusts because of tax complexities. This trend, which continued throughout the 1970s and 1980s, in part contributed to the growth of what is often referred to as “planned giving.”

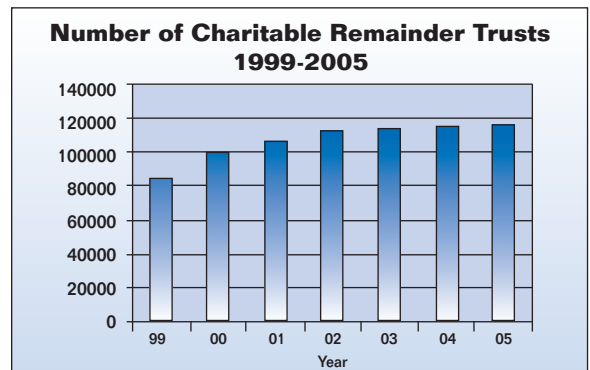
The elimination and curtailment of many other tax-advantaged activities in the mid-1980s led to increased interest in CRTs among allied professionals, including attorneys, accountants, financial planners, trust officers, and large segments of the financial services industry. After a brief learning curve, growing numbers of allied professionals were up to speed just in time for the

extended bull market of the 1990s, which saw a significant increase in the popularity of charitable remainder trusts.

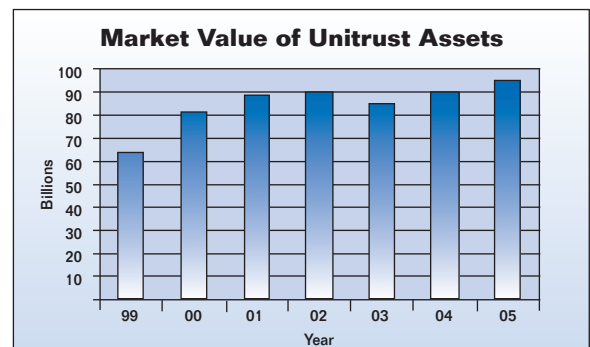
Recent returns

Now let's look at the current status of CRTs. While CRT data was very limited for many of the early years of their existence, since 1998 the IRS has periodically released valuable information gleaned from tax returns for charitable remainder annuity trusts, charitable remainder unitrusts, pooled income funds, and charitable lead trusts. By examining figures from multiple years, fundraising professionals gain important insights into the relative attractiveness and use of these planning tools.

Between 1999 and 2005, the total number of charitable remainder trust returns grew from 85,060 to 116,446. The reported value of these trusts also increased from \$64.3 billion to \$104.6 billion. The following chart illustrates the growth in charitable remainder trusts reporting to the IRS.



Based upon the number of CRT returns filed, there appears to be a slowing of the growth of charitable remainder trust activity in recent years. On the other hand, the fair market value of unitrust assets hit a record high of over \$95 billion in 2005, reflecting overall gains in investment markets.



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Sharpe Seminar Series

Featured Seminar: Major Gift Planning

One of the most popular seminars in the Sharpe seminar series, Major Gift Planning will be offered in Washington, D.C., Chicago, and New York in the coming months.

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
- Overview of Regulatory Issues in Major Gift Development
- 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
February 12-13

Managing Planned Giving Relationships

Chicago
February 14-15

Major Gift Planning

Washington D.C.
February 22-23

Chicago
March 29-30

New York
April 16-17

Integrating Major and Planned Gifts

Washington D.C.
April 23-24

Multiple registration discounts are available. For more information or to register, please contact The Sharpe Group.
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E-mail: seminars@sharpenet.com

Estate Administration: Part II...Continued from page 1

the only way someone will grow to be the right kind of person is if they make it on their own. They feel they have always supplied their children with the resources they believed were necessary to help them become successful in their lives.

Their estate will be valued in excess of \$6 million. Having provided sufficiently for their children during their lifetime, at the end of their lives they want all their money to go to charity to help children who are less privileged than their own. This is their legacy. They know that some of their children may not agree with their decision, but they also know that the majority of their children have learned the lessons that they have tried to instill and will not challenge their parents' wishes.

They have told the charities that if any of their children contest their wills, they want the charities to vigorously defend against it. This is the spirit you see in many successful people. And, unfortunately, these may be the estates where will contests ultimately arise.

In these cases, it is wise to hire outside counsel. It will be much easier for the attorneys representing contestants of the will to talk with your attorney and negotiate a settlement (if that is indicated) than it will be for you to handle these conversations.

A factor that should definitely be considered when hiring an outside attorney is whether other charities are named in the will. If so, and your interests are not in conflict, then you should contact the other charities and try to get as many of them as you can to pool their resources to hire an attorney to represent your mutual interests.* This can save money on attorney's fees as you will be sharing the costs rather than each of you having to pay an attorney separately.

When you hire an attorney to represent a group, make sure he or she is not planning to charge each of you the full hourly rate. I have seen attorneys in some cases try to justify this practice by saying they will have to discuss the case with each charity separately. If this comes up, negotiate an arrangement where the attorney communicates with all of the charities involved through regular, group conference calls. This negates the need for the attorney to charge each client a separate fee. If an attorney is unwilling to charge one fee, then the group should consider seeking another attorney.

There are other times when you may want to hire specialized counsel. For example, outside counsel may be helpful when you are dealing with hard-to-value assets, such as on-going businesses. Or, you may be handling real estate that will be difficult to sell for the fair market value due to any number of factors. You may also have to deal with mineral or timber rights in an

estate where you need legal expertise beyond that of your regular attorney. There are any number of other complex matters that may require the assistance of specialized counsel.

How do you find the right attorney?

This is probably the hardest thing to do unless the estate is being probated in your community. Since donors may reside in various parts of the country at the time of their death, you will need to have a systematic way to hire competent counsel in areas that may be outside your community.

If you have local counsel, you may want to ask them if they have any affiliation with attorneys in the area where the will is being probated. If they cannot help you, then you may want to get help from a resource I use regularly.

Martindale-Hubbell is a helpful reference that lists attorneys in all areas of the country and also notes their specialties. Always choose an attorney who lists estate or probate as one of their specialties. Just as physicians specialize in a specific area, more and more attorneys are specializing in probate and other matters as well.

In many cases this resource will also provide a rating for each attorney. It works like this: attorneys in the same locale rate each other based on their years of practice, expertise, and the respect other attorneys have for them. This is presented in a grading system within Martindale-Hubbell as "AV," "BV," or "CV." A "CV" rating does not necessarily mean that attorney is inferior, but it probably does mean that at a minimum he or she is relatively new to the practice of law and has not yet developed a track record. I would generally try to find a probate specialist with an "AV" or at least a "BV" rating.

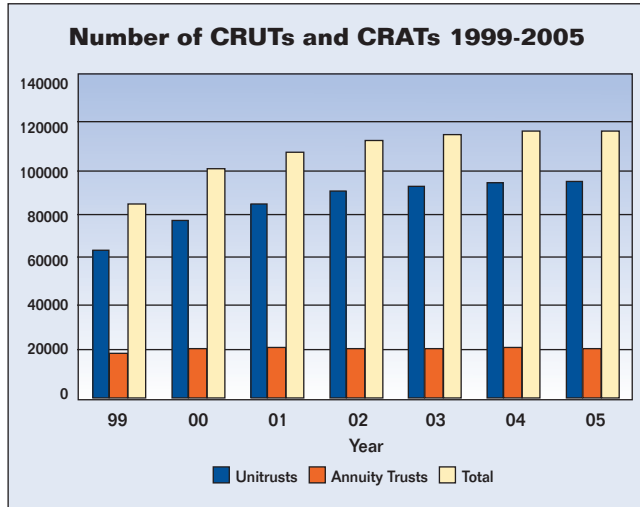
But this is not the end of your due diligence. You should contact prospective counsel and discuss their qualifications and fee structure. Ask them if they have ever represented a nonprofit in a will contest. Ask if they know of your organization—after all, you want them to be your advocate in what may be a complex matter that may be worth a substantial sum to your institution. Explain the issues that concern you about your estate matter and probe them for their thoughts on how they would handle these issues.

While a charitable organization or institution may justifiably want to protect its interests, they should never be seen as overbearing or demeaning to a relative of the deceased, their counsel, or others. So, keep in mind that the attorney's demeanor will be viewed as *your organization's* demeanor in court. Remember that the first impression of a judge or jury in the matter is likely to be the same as yours. Be careful that you select

* You should ask the attorney about the necessity of a joint defense agreement.

CRTs by the Numbers...Continued from page 2

The IRS figures also provide a more specific breakdown of the number of annuity trusts and unitrusts:



The number of annuity trusts has been relatively flat over this 7-year period, with all of the growth driven by unitrusts. The number of CRAT returns ranged between 20,000 and 23,000 each year. Their book value was estimated between \$9 billion and \$10 billion. Between 2000 and 2005, the number of CRAT returns fell slightly from 22,669 to 22,626 and the book value dropped from \$10.5 billion to \$9.5 billion.

The number of unitrust returns continued to grow from 1999 to 2005, but the growth has stagnated in recent years. The number of CRUT returns grew from 64,923 to 78,293 from 1998 to 1999, an increase of over 20%. However, between 2003 and 2005, the number of CRUT returns grew from 91,374 to 94,779, just a bit over 3% in three years. Overall, since 2001, there has been very little growth in the number of both types of charitable remainder trusts.

Size of trusts

The IRS also provided information on the size of both types of charitable remainder trusts. The CRTs were divided into three categories:

- Small—asset values of less than \$500,000
- Medium-sized—asset values of \$500,000 up to \$2,999,999
- Large—asset values of \$3 million and up

Almost 18,000 annuity trusts were categorized as small, and fewer than 4,000 CRATs had a book value greater than \$500,000. Less than 400 CRATs had a book value over \$3 million.

Unitrusts showed a similar distribution with 63,145 falling into the small category, 24,124 in the medium-size group, and 3,336 in the large group.

Observations & data limitations

Taken collectively, the combined multi-year figures provide an interesting look at the recent history of charitable remainder trusts in America. After a period of rapid growth in the late 1990s through 2001, there has been slower growth in assets, although unitrust market values hit all-time highs in 2005. This growth has occurred in market values of pre-existing trusts as relatively few new remainder trusts have been created since 2001.

The strong stock market showing and involvement of allied professionals and the financial community helped fuel the accelerated growth, while declining equity markets and interest and dividend rates contributed to the deceleration. Between 2001 and 2004, it was difficult to generate income or gains necessary to make trust payments, plus potential donors were less likely to fund gifts in the aftermath of broad market declines.

Today, however, the Dow and broader stock market indexes are trading at or near record highs, and interest and dividend rates have increased substantially from the record lows of just a few years ago. Many prospective donors have seen their stock portfolios increase in value, yet they continue to be uncertain about the market's long-term viability. Additionally, the donor pool as a whole is aging and growing numbers are entering or approaching retirement age, traditionally the period when donors fund CRTs. The idea of "giving out of the market" to fund a CRT for a term of years or life may thus enjoy renewed popularity for affluent and moderately wealthy donors.

As in the past, those in the 60 to 70 age range may be more attracted to a variable income plan such as a unitrust, while older prospects, or those utilizing a term of years trusts, may be more interested in an annuity trust. The rapid proliferation of gift annuity programs that offer fixed income and tax advantages similar to CRATs may mean that we will not see the renewed growth in CRATs that we might expect to see in the number of new unitrusts created. In the same vein, if interest rates rise, we may see renewed interest in pooled income funds as an alternative to CRUTs for persons who wish to make life income gifts using smaller amounts. Development executives who recognize the differing needs of their donors and develop relationships with them accordingly may help encourage a rebound in the popularity of CRTs.

Finding CRT prospects

Discovering those who may wish to create CRTs in today's more favorable environment may be a bit like looking for needles in a haystack. The Sharpe Gift Planning Matrix™ may make the search easier.

Estate Administration: Part II...Continued from page 4



Triena Stecks is senior vice president and consultant with The Sharpe Group. An attorney, she worked in fundraising for 20 years at a major national organization where she led extensive marketing and gift planning efforts, as well as estate administration.

someone who will present himself or herself in an appropriate manner and be able to handle delicate issues with sensitivity and finesse.

When and how do you settle an estate matter?

How do you know when and how to settle for what is fair, what fulfills your duty to carry out the donor's wishes, and what at the same time protects your organization's reputation? These may be the hardest questions of all.

In my experience, if you routinely settle for whatever is offered just to close out an estate and generate cash flow, you will undoubtedly over time cost your charity substantial sums in the form of lost revenue. On the other hand, if you push too hard to negotiate a large settlement, you may end up pushing too far and even tarnish your organization's

reputation in the eyes of those who could be potential donors. Remember that sometimes these cases attract notice and generate publicity in the local area. You always need to be sure that you can justify any position you take if it appears in the media.

Example: There was an extraordinarily complex estate that lasted for nine years, went up to the State Supreme Court twice, and finally settled with the charities who collaborated each receiving an average of \$8 million. In such a case, there were a myriad of issues to be discussed and many points at which the charities had to take a hard stand. This case was in the press on a number of occasions and, in the end, the parties that opposed the charities were the ones who wound up looking greedy to the public.

It was hard for the charities to decide to continue to fight and there was one charity that settled early for \$4 million. But, by being diligent and making some really tough calls, the other nonprofits involved gained tremendously. That average of \$8 million per charity for those that didn't settle early went a long way towards helping fund their missions! I was proud to have been able to help in the process that both fulfilled the donors' wishes and provided such wonderful gifts for the charities they loved.

In the final analysis, you may need the assistance of knowledgeable attorneys and others who have handled enough estate matters to help you make these kinds of judgment calls. There is no substitute for experience when it comes to estate administration. And the cost of inexperience can be unconscionable. Be sure you have the right experts both outside and in-house working on these crucial matters for your organization. **G&T**

CRTs by the Numbers...Continued from page 5



Barlow T. Mann is an attorney and chief operating officer of The Sharpe Group. He designs planned giving programs for a number of America's nonprofits, presents seminars, and authors many articles on gift planning.

Even "small" CRTs are typically established with significant funds. The vast majority of all CRTs fall into the \$100,000 to \$500,000 range. Given the fact that most donors fund CRTs with a relatively small portion of their overall assets, most CRT donors will be found in the "Wealthy" boxes across the top of the Matrix. It is also apparent that while most CRT donors fall into the older category, a significant number also fall into the middle-aged category. In certain circumstances, CRTs may also appeal to a sub-set of wealthy, younger individuals. For example, those younger, wealthy donors in the A1 box might consider funding charitable trusts to benefit an older relative. Such donors could claim an income tax deduction and the older relative receives fixed or variable payments for life. Some in the B1 box may also be interested in

this strategy, while others in the B1 box may benefit from a term of years trust to increase cash flow prior to

	Younger -50	Middle Aged 50-70	Older 70+
Wealthy	A1	B1	C1
Moderate Means	A2	B2	C2
Limited Means	A3	B3	C3

tapping their retirement plans after age 70½. Those in the B1 box who have retired may elect to establish a CRT for life. Most of those in the C1 box will be considering CRTs that provide payments for life, but what if they die prematurely? To plan for that contingency, development officers might suggest establishing a CRT that will make payments for life, or a term of years (up to 20), whichever is longer. In this way, a donor may be able to balance both personal and philanthropic objectives.

With careful planning, the use of the Sharpe Gift Planning Matrix may help you to identify the most promising segment of your constituency who could benefit from various types of CRTs. **G&T**

Footnotes

The Charitable IRA features continuing IRA gift benefits

The Pension Protection Act of 2006 (PPA) was signed last year and encouraged IRA gifts in 2006, but it's provisions will affect giving in 2007 as well. Inform your donors about the ongoing opportunities available to those who give directly from their traditional or Roth IRA to charitable organizations. While many rushed to provide information to donors before the end of 2006, remember the limit is \$100,000 per donor for 2007, so those who receive the most IRA gifts in 2007 may be the ones who get the message out early in the year. Send the Sharpe brochure "The Charitable IRA" to those friends of your organization who benefit in 2007 from the IRA charitable rollover provisions provided in the PPA.

"The Charitable IRA" explains the continuing advantages associated with giving IRA assets, including:

- Those age 70½ who make charitable gifts directly from their traditional or Roth IRA can do so tax-free.



- Donors may continue to give all or a portion of their mandatory IRA withdrawals up to \$100,000 in 2007—even if they already made similar gifts in 2006.

- Those with retirement assets in other types of plans, such as a 401(k), may be able to transfer assets to an IRA and then make their charitable gifts.

Although the provisions of the PPA may be extended by Congress, IRA charitable rollover benefits are currently limited to gifts made this year. Year-end 2006 proved fruitful for many nonprofits who, after effectively explaining the new IRA provisions to the appropriate segment of their constituency, benefited from increased IRA gifts (see page 5 of the December 2006 *Give & Take*).

To view "The Charitable IRA" brochure and other Sharpe materials that feature IRA rollover gift information, visit www.sharpenet.com/irarollover. If you have questions or want to place an order, call 1-800-238-3253. [G&T](#)



News and ideas about The Sharpe Group's services.

New Seminar Focuses on Gift and Estate Administration

WHAT: "Issues in Gift and Estate Administration" seminar

WHEN and WHERE: February 28, 2007, Memphis, Tennessee
Spring dates for New York and Washington, D.C. coming soon

PRICE: \$395 for first registrant, \$325 for each additional registrant from the same organization

WHO SHOULD ATTEND: Professionals in charge of planned gift efforts, chief financial officers, general counsel for nonprofit organizations, and others involved in administering estates

WHY YOU SHOULD ATTEND: This concentrated one-day seminar will provide invaluable information about ways to effectively manage and monitor estates, which can result in more swift, efficient, and oftentimes more sizable gift distributions for your organization. Join The Sharpe Group's Triena Stecks, an attorney with over 20 years experience in gift planning and estate administration, as well as other premier training experts for this exciting new seminar.

Space is limited to allow for more interaction between attendees and presenters. Reserve your spot today!

For more information or to register, visit www.sharpenet.com/seminars or call The Sharpe Group at 1-800-238-3253 ext. 5360. [G&T](#)



THE SHARPE SEMINAR SERIES

2007 Training Opportunities

For 40 years, The Sharpe Group has provided premier training opportunities for thousands of nonprofit managers, volunteers, and others whose responsibilities include helping donors complete larger charitable gifts.

There are five parts to every gift, whether the gift is unrestricted or designated for capital or endowment needs: Who makes the gift? Why do they make it? What is given? When is it given? and How is the gift completed? Sharpe seminar participants learn

to balance these elements in light of a donor's needs. Sharpe seminars also address the process of structuring gifts from the perspective of various members of the fund development team.

We invite you to join the thousands of development executives who have relied on Sharpe training to help them realize the full funding potential of their programs. For agendas and more information on each seminar, please call 1-800-238-3253, ext. 5360, or visit www.sharpenet.com/seminars.

Introduction to Planned Giving

Education



Chicago
February 12-13

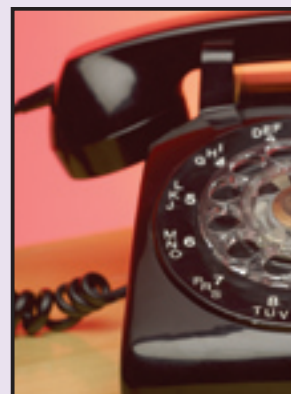
Boston
June 18-19

New York
August 20-21

Tampa
October 29-30

San Francisco
November 28-29

Managing Planned Giving Relationships



Chicago
February 14-15

New York
August 22-23

Implementation

Major Gift Planning



Washington, D.C.
February 22-23

Chicago
March 29-30

New York
April 16-17

New York
September 13-14

Integrating Major and Planned Gifts



Washington, D.C.
April 23-24

Chicago
June 11-12

Communication

Organization