

Give & Take™

News and Ideas for Development Executives of Nonprofit Organizations

Are Your Trustees 'On Board'?

by Thomas R. Dyer

Last month, I shared my first experience as a board member of a local foundation. I discussed in some detail the question of whether the board was properly fulfilling its fiduciary responsibilities in connection with its management of the foundation's investments. Making certain that the funds held by a charitable organization are properly allocated and invested is an important function of a director or trustee, but this is just one of many important responsibilities.

In the 1980s, the law firm where I worked was involved in investigating failed banks and thrifts. The cavalier attitude that many of the officers and directors of these institutions displayed toward their fiduciary responsibilities was amazing. Like most nonprofit board members, many of these bank directors were distinguished citizens and successful business leaders. However, they failed to apply the same business experience and fiduciary acumen to the bank board as they did to their own businesses.

As a result, in many cases government regulators took the position that, because the bank took public funds which were insured by the government, the board had violated its fiduciary responsibilities not only to the stockholders, but also to the depositors and, ultimately, the federal agency that insured the deposits. State regulators have taken a very similar position when nonprofit boards fail to fulfill their duties to a charitable organization that derives its funds from donors who give because they care about an organization's mission.

The New York attorney general's office has published a brochure that sets out in detail what due diligence a person should perform prior to accepting a position on a nonprofit board.¹

While these requirements are excellent ideas, and in the future I would use these as a guide prior to accepting any other positions myself, I don't believe the decision to



Join us for "An Introduction to Planned Giving" in Boston in June. See page 3 for details.

serve on a board is usually this well thought out. Most people accept nonprofit board positions because they are asked by a friend, they are interested in the mission of the organization, or they deem membership as prestigious or a way to network with other distinguished community leaders. Although it is perhaps unrealistic to expect most prospective board members to do this much due diligence prior to accepting a board position, the requirements set out by the state of New York are very instructive and could give all prospective board members a much better understanding of the duties and responsibilities of a nonprofit board member. (See the box on page 6 for a listing of the specific requirements for board members in New York.)

In addition to the New York State requirements, there have been numerous other articles and studies published recently about the responsibilities of not-for-profit directors. If you take the time to review these materials, you will discover that the recurrent theme stressed through these publications is that of responsibility.²

Here is a summary of the general responsibilities of a director/trustee as provided in the referenced material.

1. Adopt a code of ethics. The board, with the assistance of the staff, should draft and adopt a code of ethics which meshes with the mission of a specific

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- Making CRTs gifts you can 'trust' p.4

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Uncovering
your best
donors.

Who Are Your Planned Giving Donors?

by Barlow T. Mann

According to the latest study of donors conducted by the National Committee on Planned Giving, the average age of donors when they first executed a will or living trust was 44. The survey also revealed that the average age for someone to first include a charitable bequest in their plans was 49. The mean age for all donors who have included a charitable provision in a will or living trust was 58.

But these figures may not tell the whole story. After all, when was the last time your organization actually received a significant bequest from someone in their 40s, or even

50s? According to IRS statistics and studies, planned gift receipts from those age groups are relatively rare. The IRS information reveals that most charitable bequests come from the estates of people who are much older. In fact, the vast majority of charitable dollars are realized from the estates of those 80 and older. Past reports indicate that more bequests come from persons who die in their 90s than in their 70s.

Expectancies vs. maturities

These findings may not be as contrary to other reports as they seem at first glance. Most adults do not have wills. When people do first make their wills, certain circumstances usually have prompted such planning. Marriage and the birth of children are often events that trigger the need to initially formalize one's plans.

Then, as the years pass, different events inevitably prompt further updates to long-range plans. Births of grandchildren, deaths, divorce, remarriage, changes in wealth, moving to another state, and other factors often result in a revision of those plans.

As time goes by, increases in income and wealth can have a gradual influence on charitable giving patterns. As discretionary income and assets grow, charitable giving increases, and more people find they can consider including charitable provisions in their estate plans—even if just a simple bequest. Charitable bequests of a specific sum have proven to be the most popular. Yet the largest bequests tend

to be of a residual nature, where all or part of the estate is left for charitable purposes.

Planned giving donors go through various stages of estate planning. They consider their plans, act to put their plans in place, review and update their plans, and, in the final stage, their plans are realized. These stages can occur over decades; therefore, a well-conceived gift development effort must be crafted accordingly.

Much of the time and effort expended in a successful development program will be focused on where the returns on the investment will be best. This will obviously be different for the various components of a comprehensive development effort, whether donor acquisition, retention, upgrading, special and capital gift efforts, or planned gift development.

So who are bequest donors?

Those with limited time, budget, and other resources will likely find that efforts targeted to frequent, long-term donors in their late 60s and older will yield the best results. Most successful programs focus on persons who are at or approaching retirement age. After retirement, gross household income tends to fall, but discretionary income and the amount of disposable assets may be at or near their highest levels of one's lifetime. In fact, the most recent figures from the Federal Reserve now place U.S. household wealth at a record \$55.6 trillion. This rebound in household wealth in recent years may translate into additional disposable assets at death.

Singles and widow(er)s who are childless are particularly good prospects for estate gifts for several reasons. First, those with a number of children, grandchildren, or a spouse must naturally provide for family first and then charities and friends. Second, it costs a small fortune to raise every child. A recent *Wall Street Journal* article estimated the cost of raising a child from birth through high school at \$300,000 to \$1 million each! This does not factor in the cost of college, which could be another staggering figure. Therefore, childless persons may have been able to save, invest, and accumulate more resources over time in addition to having fewer non-charitable interests for which to provide in their estate plans.

There is also a tendency for more women to leave charitable bequests than men. One simple explanation for this is that women live

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Sharpe Seminar Series

Featured Seminar: An Introduction to Planned Giving

This information-packed seminar offers an in-depth introduction to the process of charitable gift planning in today's complex environment. It is designed for those who are assuming responsibility for planned giving for the first time, as well as those who have multiple duties and are looking for guidance on the best ways to spend what may be limited time and budgetary resources on planned giving.

Beginning with an overview of various types of fund development efforts and the role of gift planning in achieving greater success, this seminar examines the personal priorities of donors at different stages in life

and explains how gift planning vehicles can help remove obstacles to larger gifts from donors of all age and wealth levels. Practical guidance on gift acceptance and valuation policies, program planning, budgeting, and implementation of effective gift planning efforts in programs of various sizes will be presented.

This seminar will prove useful to senior development managers and those responsible for other funding efforts, in addition to those who wish to expand their duties to concentrate more effort in charitable gift planning now or in the future. [G&T](#)



Upcoming Seminar Training Dates

An Introduction to Planned Giving

Boston

June 18-19

New York

August 20-21

Managing Planned Giving Relationships

New York

August 22-23

Major Gift Planning

New York

September 13-14

Integrating Major and Planned Gifts

Chicago

June 11-12

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

On the Agenda for 'An Introduction to Planned Giving'

Day One

- Introduction to the Planned Giving Process
- Understanding the Life Cycle of Donors
- Basic Planning Considerations
- The Charitable Tool Box—Part One
- The Charitable Tool Box—Part Two
- The Sharpe Gift Planning Matrix

Day Two

- Introduction to Property Gifts
- What Is the Gift Worth?
- Gift Acceptance Policies
- Marketing Planned Gifts
- Cost-Effective Planned Giving
- Putting It All Together

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

What Attendees Are Saying About 'An Introduction to Planned Giving'

"The Sharpe Group and their professionals have opened my eyes to the complete 'big picture' of how to, what to do, and what to expect in planned giving."

—H.C. "Buzz" Dixon, Family Connection, Inc., Anderson, IN

"The speakers knew their subjects and had good examples based on their experiences; content material was well integrated and reinforced from speaker to speaker."

—Karen Crenshaw, University of Pittsburgh, School of Dental Medicine, Pittsburgh, PA

"This is the most worthwhile professional conference I can remember attending."

—Mr. Chandler Battaile, Association for the Preservation of Virginia Antiquities, Richmond, VA

"The personal experience of the presenters is invaluable. Their ease and confidence make it very easy to pay attention."

—Kate Hoffman, Foundation for LSU Health Sciences, New Orleans, LA

Making a Charitable Remainder Trust 'Worthy'

by Robert F. Sharpe, Jr.



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

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

increased activity in this area is certainly welcome!

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

Discovery can be vital

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

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

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

CRT or bequest?

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

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

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

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

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

What to do?

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

'On Board'? ...Continued from page 1



Tom Dyer is an attorney and chief executive officer of The Sharpe Group. With over 40 years of legal experience, he previously served as Sharpe's long-term legal counsel.

organization. A copy of the code of ethics should be given to the board at least once a year. The code of ethics should be explained at board orientation meetings, and any new board members should receive a copy of the code prior to their first meeting.

Under the terms of the code of ethics, board members should complete a conflict of interest form once a year. The forms should outline any conflicts of interest and explain them in detail. The conflicts of interest should be reviewed by the board's audit committee to make certain they are not problematic. Keep in mind an Internal Revenue Service

draft entitled *Good Governance Practices for 501(c)(3) Organizations* warns, "The duty of loyalty requires a director to act in the interest of the charity rather than in the personal interest of the other person or organization."

2. Establish an audit committee. The board should create a separate audit committee, of which at least one member is a financial expert. This audit committee should select an outside firm that will be responsible for annual financial audits. The auditors need to provide the nonprofit with an engagement letter outlining the scope of the work to be performed and the fee to be charged.

Once an audit firm is chosen and the terms of its engagement are approved by the audit committee or full board, if bylaws require, it is good practice to rotate the managing partner in charge of the audit or change audit firms every five years. Even if you retain a firm and simply rotate the partner in charge of the audit, I would recommend moving to a new firm after a 10-year period with the same auditors. I have seen organizations that have used the same auditor for over 25 years. In today's environment, that is not advisable. In most of the notable past failures of large public companies, accounting firms with long-term relationships with the companies were part of the problem, not part of the solution. Even if you have had a satisfactory experience with your auditors, selecting a new firm at least every 10 years wards off the problems too much familiarity can breed.

3. The board should approve various items on an annual basis. Here is a list of some, but not all, of the items that should be approved:

- Assess and adopt a strategy for the organization (e.g. the one-year plan, the five-year plan, and how the plan is to be funded).

- Approve the budget.
- Receive a report from the appropriate committee or the board chairman outlining the performance and compensation of the CEO. If you are a board member, make certain you ask questions before you approve the recommendations presented to you. CEO compensation has become a hot-button issue. For example, take the recent publicity surrounding the compensation for the Smithsonian Institution's CEO, who received a compensation package totaling \$1.28 million during the 2004-2005 fiscal year. When Congress, which funds a large portion of the Smithsonian's budget, discovered this practice, it threatened to cut off funding to the Institution. In my experience, excessive compensation is generally the exception to the rule. Most nonprofit CEOs work for salaries that are less than they could earn in the public sector.
- Oversee the management of endowment and reserve funds.

Final thoughts

In order for nonprofit organizations to raise funds, manage those funds, and carry out their missions of service, now more than ever they must be governed by conscientious, honest, dedicated board members. Due to increasing government oversight and public scrutiny of nonprofits, potential board members who are accustomed to more stringent requirements in the for-profit sector may become more wary of serving the charitable sector in a board capacity.

This will make attracting and securing competent board members even more critical. As prospective board members consider the charitable interests to which they would like to devote their time, talents, and financial gifts, make sure your organization stands out as one that not only inspires them, but also gives them no reservations concerning your organization's overall leadership or financial dealings.

You may find that the prospective board members you most want to attract will respect and be impressed by the extent to which you go to ensure that they understand and are willing to comply with high standards of service. As "birds of a feather," they may be more comfortable serving with others who have agreed to serve only in compliance with well-conceived and communicated governance policies. [G&T](#)

¹ "Right from the Start Responsibilities of Directors and Officers of Not-For-Profit Corporations," Attorney General State of New York.

² See the following documents: "Panel on the Nonprofit Sector Invites Second Round of Comments on Revised Draft Principles for Effective Practice," at www.independentsector.org; "IRS Prepares Draft of Good Governance Practices for 501(c)(3) Organizations" by Tax Analysts; "Governance is Governance," by Kenneth Dayton for Independent Sector; NACUBO Study, "Taking the Right Path," by Price Waterhouse Coopers; "AGB Statement on Board of Accountability," adopted by the AGB Board of Directors, January 17, 2007.

Rules in the State of New York

In the state of New York, the attorney general's office holds a nonprofit director responsible for having done the following due diligence. Though these requirements may not exist in all states, such requirements could become a pattern for other states and are a good guideline for those considering conditions for nonprofit board leadership. Tom Dyer's notes are in italics.

1. Read the organization's certificate of incorporation, application of federal income tax exemption, by-laws, and board and committee minutes for at least the last year to learn about its stated purposes, activities, and concerns.

2. Obtain a current list of board and committee members and find out from the board chair and the organization's chief executive and financial officers what is expected of board members. *This will give a prospective board member an understanding of the governance of the organization. They may also wish to talk to existing and prior board members to get a sense of how the organization has been managed in the past. My personal suggestion is that one make certain that all board members are also contributors to the organization—preferably giving more than nominal amounts. There could be exceptions to this requirement, for example a trustee who is very influential in the community but may not have the financial wherewithal to make a significant financial gift.*

3. Review the organization's Internal Revenue Service Form 990 or 990 PF and audited financial statements for at least the last two (2) years as well as its current internal financial reports to see how the organization uses its assets and to evaluate its financial health. *All organizations are not required to file 990s, therefore all of this material will not always be available. But determining the status of the organization's standing with the IRS is very important, since the loss of the designation as a qualified charity could have a dramatic impact on the ability of the charitable organization to obtain funds. If the charity is a college or university, check the status of the organization's position with the regulatory body governing institutions of*

higher education (e.g. Southern Association of Colleges and Schools, New England Association of Schools and Colleges, etc.).

4. Find out if the organization is required to register with the Attorney General's Charities Bureau and, if so, whether it has registered and filed all required reports. *States may require different registrations with different government agencies, therefore checking with the attorney general may not be sufficient.*

5. Obtain an understanding of the internal control structure of the organization and the process in place to monitor it.

6. Understand the organization's mission, learn about its programs, read its publications, visit its program sites, look at its website, and talk to key staff and major donors.

7. Review the organizational chart and understand the accountability structure of the organization.

8. Make sure there is a conflict of interests and code of ethics policy in place and that it is updated annually.

9. Find out what committees the board has established and decide which (if any) to join.

10. Obtain the name of the organization's auditors and determine their reputation.

11. Find out if materials to be considered by the board or its committees are distributed in advance of meetings and whether they provide sufficient information necessary to be part of the stewardship process.

12. Obtain the current year's budget and cash flow projections.

13. Find out whether the insurance coverage appears to be appropriate, including Directors and Officer's liability and employee fidelity insurance.

14. Be sure to be able to devote the time expected of a board member. G&T

Trust 'Worthy' ...Continued from page 4

some 580,000 individual trust expectancies to be discovered in America today.

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

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

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

Editor's note: This article is excerpted from the popular Sharpe seminar "Integrating Major and Planned Gifts." See page 3 for more information.

Footnotes

Crash course in a variety of gift plans

You have probably encountered them almost daily—donors who want to do something special in support of your organization, but don't know where to start. In such cases, wouldn't it be useful to furnish those who have not decided which gift plan best suits their needs with information that can help them decide how to meet their goals?

If you are looking for one booklet that offers a concise overview of the most popular planned giving options, consider the popular booklet **"Reflecting on Tomorrow."** From bequests and gifts of retirement plans and other remainders to gifts that provide income, "Reflecting" discusses nine different, commonly used gift planning opportunities. The booklet also includes concise examples that simply illustrate how donors can use planned gifts to achieve their personal and philanthropic goals.

This publication's versatility makes it a must to have on hand to share with donors both in person or in correspondence in response to inquiries. You may wish to consider using this booklet as a follow-up piece for those who respond to planned gift mailings or other marketing efforts. "Reflecting" is also an appropriate response piece for those who may want to learn more about making a memorial gift.

Like Sharpe's other booklets, this piece may be personalized—either with an imprint of your logo and contact information on our standard cover or through a custom cover and copy designed by your or Sharpe's artists and edited by the Sharpe team. See the cover design on the back cover of this issue of *Give & Take*.

To learn more about this or other Sharpe publications, please visit our web site at www.sharpenet.com/pubs or call 1-800-238-3253 to speak with a Sharpe representative. **G&T**



News and ideas about The Sharpe Group's services.

Planned Giving Donors? ...Continued from page 2



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.

longer than men. Most bequests from married persons come at the death of the surviving spouse. In the case of wealthier individuals, this generally happens because the first spouse to die leaves everything to the survivor under the marital deduction to postpone taxes. In the case of those of lesser means, this occurs out of necessity.

Older persons who have never married or who are widowed without children are also much more likely to give through gift annuities and other life income gifts. Why? Because the guarantee of a fixed income they can't outlive may outweigh the irrevocable nature of such gifts, especially since they may not have to consider leaving a substantial part of their estate to non-charitable heirs.

Conclusion

Bequest donors and other planned giving prospects are an extremely diverse group. But, by taking the time to consider the age, gender, marital status, and family makeup of your constituency and targeting information appropriately, your investment of time and other resources may yield greater returns in both the near and long-term. **G&T**

Editor's note: This information is excerpted from "An Introduction to Planned Giving." See page 3 for more information about this and other popular Sharpe seminars..

Restock Your Library

When donors and prospective donors ask for detailed gift planning information, it is important to have a library of appropriate and accurate publications at your fingertips.

Replenishing your gift planning library can be as quick as a phone call. Sharpe's full line of informational booklets is available to help you give donors and their advisors the information they need when considering specific types of gifts.

All Sharpe publications have been updated for 2007 and reflect the most recent developments in tax laws and other important changes.

Plan ahead and save

All booklets may be personalized on the front and/or back cover. Enjoy reduced unit and personalization costs when ordering multiple titles. To request a free kit of sample booklets, please visit www.sharpenet.com/booklets/.

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