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# What to Do When the Bequest Matures
# Developing a Checklist

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## 1. Introduction

The purpose of the present discussion is to give charities some ideas about developing a checklist to guide the review of a matured bequest. A checklist is intended to identify foreseeable problems at an affordable cost, and so the focus will not be on covering all of the rights and obligations a charity might have in accepting bequests. Of course, each charity needs to make its own decisions about what sorts to issues to flag and what actions to take. But one of the more valuable aspects of a checklist is to decide what sorts of commonly encountered issues do not warrant getting outside legal assistance if staff is trained in acceptable business risks.

### 1.1 A word about philanthropic philosophy

The fiduciary will want you to accept his or her word that everything is just peachy-keen, so please sign this release and accept the lovely bequest he or she is just itching to send you. And that is exactly what most charities do – a practice that has almost institutionalized the belief that "Charities Make the Best Victims". A balance can be struck between being a patsy and obnoxiously insisting on the last inch of legal protection.

Some highly intelligent people hold the view that charities should never bite the hand that feeds them. Charities taking that position need only a very simple checklist. In my view, while a charity may have a specific mission, the goal of advancing the general public good should not be dismissed. In a manner somewhat akin to Adam Smith's invisible hand, each time a charity pushes back on sloppy, aggressive or unethical practices in handling a charitable bequest, a signal is sent that indiscernibly nudges the standard of practice higher for all charities. In an era of tight budgets spending funds to advance this cause can be hard (impossible) to defend, but that is part of the goal of the checklist. Simply asking a suitably deferential and cautious question can make a contribution to lifting the standard of practice, and it is something that a staff person can do without getting legal counsel involved.

## 2. First Contact

### 2.1 Get the mail to the right person

In a perfect world, whoever has primary responsibility for fundraising in your organization would know that a particular donor intended to make a planned gift effective at death, and would have a personal relationship with the donor. The executor would know exactly who to contact when the donor died. But the longer your organization has been in existence, the more likely it is that some planned gift will come in from left field.

The broadest definition of a planned gift encompasses every charitable gift other than an unrestricted cash transfer from a living donor. This outline will focus only on those transfers that arise in connection with the death of an individual, who may not necessarily be the donor. I use the word "bequest" as a short hand reference to such transfers. Examples of the broader meaning of "bequest" include not only restricted and unrestricted bequests, but the creation or termination of a trust that has charitable beneficiaries, the creation of a charitable gift annuity funded at death and the creation or termination of a term interest such as a life estate in a farm or personal residence. The considerations involved with a bequest are quite different than those involved with an annual gift, and even if your organization has never before received a bequest, it is prudent to be aware of the differences before one (hopefully) does arrive.

Everyone who opens mail (or e-mail, etc.) in your organization should know exactly where to send information about a possible gift of any sort. In very small organizations, it may be necessary to tap a board member to take responsibility for reviewing and sorting information about potential bequests. Large organizations should prepare for the possibility that notice might arrive in unexpected ways. I know of a case where a notice of a very large bequest for the purpose of establishing a scholarship was sent to the scholarship department of an Ivy League School instead of its planned gift department, and the letter was simply ignored.

Internally, the obvious starting point for organizing the flow of information about a bequest is the mail room. Beyond the mailroom, information about bequests should be in directories, organizational charts, internal FAQs and secretarial training materials. One of the easily overlooked points is training your annual gift team to identify restricted gifts. You do not want to accept any gift that comes with an onerous restriction, especially a bequest where returning the transfer may not be an option.

Externally, the information about making a bequest should be on the organization's webpage and in solicitation materials. I find it surprising how often such information is hard to find. The following information should be easy to find on your charity's webpage:

- Your legal name for receiving gifts, your TIN, and the name and address of the department for receiving notice and providing support.
- If your organizational structure is complex, for example a charity with local chapters, information about how to properly identify the intended recipient
- A link to a gift acceptance policy if one exists[1]
- A link to your mission statement
- A link for requesting more information about types of planned gifts

### 2.2 **Triage**

Once the notice gets to the right person, that person must make some initial decisions about how to process the notice. While the needs of your organization may vary, here are some suggested categories:

- Unrestricted pecuniary (i.e., specific amount stated in the governing document) above some threshold
- Unrestricted pecuniary (i.e., specific amount stated in the governing document) below some threshold
- Restricted pecuniary bequest
- Bequest of non-marketable asset or publicly traded partnership interest
- Testamentary charitable gift annuities
- Residuary bequest
- Abated bequests

[1] There is a grey area surrounding incidental and possibly thoughtless restrictions. Suppose a donor makes a gift specifically to the X fund at a charity and the donor states that no more than 4% of the fund is to be treated as income, when your charity's spending policy is to take 5%. Without trying to decide what to do in any particular case, the charity will be better off if it publishes general information about the X fund, including the fact that all gifts to the X fund will be administered in accordance with the charity's general operating principles. There is at least an argument to be made under the principles of *cy pres* that the published guideline controls over the more restrictive language in the governing instrument because the donor would not want the gift to fail entirely.

## 3. Closing Documentation

Even very small pecuniary bequests will come with some closing document that the fiduciary handling the matter will want signed. The ground rules for closing documents are foundational for all categories of bequests. While I address closing documents here, it should be clear that one should review a closing document (other than a partial receipt covered below) only after completing a more general review of the bequest.

A fiduciary can prepare an account and file it with a court of competent jurisdiction and ask the court to "award" the amounts the beneficiaries are to receive. The beneficiaries have the right to receive notice and to challenge the account for alleged deficiencies. The court will eventually award fixed amounts for the fiduciary to pay the beneficiaries, and by paying the amounts awarded the fiduciary is relieved of all liability except for certain federal tax liabilities.

A fiduciary will very often offer to make a distribution to a beneficiary without going to court if the beneficiary agrees that the amount it receives is correct and agrees to release the fiduciary from liability. This informal procedure is usually desirable from the beneficiary's point of view, since going to court will add significant delay and possibly increase administration costs. The closing document that the fiduciary asks the beneficiary to sign is often quite simple, but can sometimes be quite complex. The functional purposes of closing documents can be divided into four general categories:

- Receipt
- Release
- Refunding
- Indemnification

### 3.1 Receipt

The fiduciary understandably wants a receipt. Sometimes this is a separate instrument that the fiduciary can file of record, and sometimes the receipt is incorporated as part of the release.

#### (a) Matching

Does the description of what you acknowledge receiving match the gift in the governing instruments? Subject to other considerations discussed below, it can be reasonable to rely on an attorney's representations about the gift.

(b) **Interest**

Is the gift entitled to interest due to delay in payment and is that amount included in the receipt?

(c) **Ok to sign receipt before receiving**

It may seem odd, but charities are often asked to sign a single closing document that contains both a release and a receipt before actually receiving a check. Unless the amount is large or the charity has reason to suspect the fiduciary, it is customary to execute and return the single closing document if an attorney is handling the matter since it considerably simplifies the process of getting a check into the hands of the beneficiaries.

(d) **Partial amounts**

Sometimes a fiduciary breaks apart larger or more complicated distributions into stages. Generally, a partial receipt may include a refunding agreement but should not include a release, even as to the part currently distributed.

(e) **Legal acceptance**

The receipt is a legal acceptance of the gift. If the gift comes subject to restrictions, liabilities or potentially adverse publicity, the receipt assumes all negative aspects of the gift. Even more than in the case of an inter vivos gift, it may not be possible to rescind an accepted bequest.

3.2 **Release**

(a) **Can be a very complicated section of the closing document**

Before signing any release, the charity should first decide whether it needs additional information to decide whether to grant a release. Once a charity decides either that (i) it does not see any problem or (ii) it may not be cost effective to raise an issue, the typical course is to sign any requested releases and waivers. These provisions can be very complicated. The attorney for the fiduciary may use a standard form that covers many situations. The attorney may also be aware of specific state law procedural requirements. As long as these provisions do not amount to more than an agreement not to sue, standard practice is to give the fiduciary whatever is requested.

(b) **Deciding what information to request short of a full accounting**

Preparing a fiduciary accounting can be quite expensive and often does not provide very useful information unless very serious misconduct is suspected. If the bequest is

a fully paid pecuniary amount, additional information is unnecessary for release purposes. Similarly, if a reputable source makes representations that put an upper limit on what is likely to be at stake, it can be a reasonable business decision not to investigate further. For example, if $800,000 was put into trust 8 years ago for a spouse who just died and a charity has only a 5% interest in the remainder, I might not recommend investigating why the charity's share is now only $17,000.

While it is not possible to cover every other situation, here is a list of some of the limited information that can be useful to ask for short of a full accounting.

(i) **Representations about fees and commissions charged by the fiduciary and the fiduciary's attorneys**

Absent special circumstances, these costs in connection with long term vehicles such as a trust should not exceed perhaps 1.5% of the assets each year. Sometimes there are fee agreements signed by the donor that authorize higher expenses, and minimum charges can produce higher percentage fees for smaller matters. As a general rule, the percentage charge should decrease as the size increases. Sadly, gouging does occur. Even if the excess charge for a single year may not seem material, over a number of years the amount at stake can be substantial. If other charities are also remainder beneficiaries, this is a case where getting group representation may make sense.

(ii) **Copies of recent tax returns**

The fiduciary should always have access to these returns, and with very few exceptions a residuary beneficiary should be entitled to them. Knowing how to get the most information from these returns is definitely a specialized skill, but pretty obviously some explanation should be sought if a decedent earned $1 million per year in interest and dividends and a one-third share of the estate is predicted to be only a few hundred thousand dollars.

(iii) **Representations about prior estate plan and/or copies of prior documents**

This may be one of the most fruitful questions of all. A very charitably minded donor may have very uncharitable relatives. If there is any reason to suspect undue influence, for example if the donor died at an advanced age, this is a very appropriate inquiry to make.

(iv) **The attorney's relationship to the donor**

If the attorney actually represents a relative, inquiring about prior estate planning documents is quite important.

(c) **If a draft account is provided**

Formal accounts are very useful if embezzlement by the fiduciary is suspected, but in most other cases are difficult to assess. I find it very useful to use the XIRR function in Excel to calculate the internal rate of return earned over the accounting period. Enter the starting date in a cell in one column of the spreadsheet and the starting value of the fund in the cell next to it in another column. Enter the starting value as a negative number. In a cell in a separate column of the spreadsheet put the date of the first distribution to a beneficiary and put the amount of the distribution as a positive value in the cell next to it in yet another column. Enter the date of the next distribution in the cell below the date of the first distribution, and the amount as a positive amount in the cell below the amount of the first distribution. Continue entering data for additional distributions. Note that the account may group beneficiaries separately, so that after the distributions are stated for one beneficiary, the account may jump back to an earlier date when distributions to another beneficiary begin. Keep entering data in same, second pair of columns. The account will definitely separate income and principal distributions, so this is another way earlier distributions may be come up in the account after (by pagination) later distributions (by time). Once all distributions are entered, sort the second pair of columns by date. All distributions will then be date ordered. Move the information to the cells immediately before the cells with the opening date and starting value. At the very end of the new combined list, put the ending date of the account and the ending value of the account. You can then use the XIRR function to determine the internal rate of return earned by the fund, probably the single most useful piece of information to have in reviewing an account.

If the account shows an internal rate of return of over 8% over any substantial period of time, a challenge to the fiduciary's economic performance probably is unwise. If the internal rate of return of less than 4% over any substantial period of time, further investigation may make sense.

### 3.3 Refunding agreement

In a refunding agreement, the charity agrees that if unexpected liabilities arise, the charity will return funds to the fiduciary. Agreeing to some form of refunding is standard practice.

A refunding agreement should provide that all residuary beneficiaries should be required to equitably contribute to any liability, which usually means in proportion to the amount received. In some complex situations, differing tax burdens, unusual distribution patterns in the governing instrument and the possibility that some beneficiaries will spend what they receive means that the language governing the charity's share of any refunding may need some thought. A charity would prefer to agree to refund no more than the amount it received, but the fiduciary will want the charity to agree to refund whatever is necessary to protect the fiduciary from personal liability, and this can mean that the beneficiary may be required to refund the entire distribution plus interest. In some cases, the charity will negotiate to refund only its equitable share of the liability, and not additional fees and expenses.

### 3.4 Indemnification

The general rule is to never agree to an indemnification unless your legal counsel is involved. The closing document the fiduciary asks the charity to sign is a contract. Any document that includes the words "indemnify" "hold harmless" "defend" "assume" when connected with a liability, "guarantee" or any other words that suggest far more than just a release deserves special thought. An indemnification can make a charity liable for far more than the amount received. You would not sign a contract to spend a million dollars without experienced legal review; an indemnification can be just as important.

#### (a) Capped indemnification

Sometimes the closing document includes an indemnification, but clearly limits the indemnification to the amount received by the charity. This is functionally equivalent to a refunding agreement that includes the fiduciary's additional fees and expenses as part of the liability, and so in appropriate circumstances is not a major problem.

### 3.5 Battle of the forms

Generally, it is customary to work with the closing document drafted by the attorney for the fiduciary; one way to show appreciation for a bequest is to be cooperative. But the charity is not required to sign the closing document in the form provided by the attorney for

the fiduciary. If the requested closing document includes an indemnification provision, or is unduly complex for a pecuniary bequest paid in full, it is not unreasonable to provide an alternative closing document with a receipt, release and refunding agreement. It is useful to have a simple standard form for this purpose that can be prepared without consulting with legal counsel. Of course, the attorney for the fiduciary is not required to accept your form either.

4. **Small unrestricted pecuniary bequests paid in full**

Very little review is required. Some auditors want the charity to always get an excerpt from the governing instrument demonstrating the lack of a restriction.

5. **Large unrestricted pecuniary bequests paid in full**

5.1 **Google the donor**

Most charities with gift acceptance policies have guidelines about unacceptable donors. Even if your charity does not, this step takes almost no time and may flag an issue that deserves board consideration.

5.2 **Check with development staff and investigate prior giving**

Donors making large bequests are probably known to your charity's development staff. A member of the staff may have a relationship with relatives of the donor and will probably want to reach out with condolences and expressions of appreciation. Sometimes, the development office will have information about the donor's intentions, and the bequest should be compared with that information for possible discrepancies.

Larger bequests should always be viewed as opportunities for developing new donors from among the donor's friends and relatives, and the donor's advisors. A personal touch is almost always the most effective, but having standard letters and information to send is a very low cost, unobtrusive way to get your charity known.

5.3 **Pledges**

Check to see if the bequest is intended to satisfy a pledge.

5.4 **Interest**

Check to see if the pecuniary bequest should include interest and whether this interest will be paid.

5.5 **Governing instrument excerpt**

Ask for an excerpt from the governing instrument that shows that the bequest is unrestricted. This information needs to be preserved in the charity's permanent files.

6. **Restricted pecuniary bequest**

6.1 **Varieties of restrictions**

Restrictions on charitable gifts present a variety of problems. For accounting purposes, all gifts should be characterized as falling into one of four categories. If the donor's restrictions are so unclear that it is not obvious which box applies, additional help is clearly necessary.

| | Time Restricted | Time Unrestricted |
|---|---|---|
| Purpose Restricted | Example – A donation given to a particular scholarship endowment. The charity may only use the income from the endowment, and only for scholarship purposes. | Example – A donor gives money to fix a particular building problem. Accountants will call this donation a temporarily restricted asset (although auditing standards will change in 2018 and the difference between permanent or temporary restrictions will be eliminated.) The money must be used for the required purpose, but there are no strings on how the money is used over time. The money may, but need not (and probably won't) be, all spent immediately, and both principle and income must be spent for the specified purpose. |
| Purpose Unrestricted | Example – A donation to a general endowment fund. The charity may use only the income, but the income may be used for any purpose. | Example – A simple pecuniary bequest. The charity may immediately use all income for any proper purpose. |

6.2 **Governing instrument excerpt**

Ask for an excerpt from the governing instrument that shows that the bequest is unrestricted. If the bequest is accepted, this information needs to be preserved in the charity's permanent files.

6.3 **Restrictions standard to your charity**

A restricted bequest will often fit into a standard category for your charity. For example, a university will have scholarship funds and a church may have a building fund. Staff should have an easy way to determine whether a bequest fits within a previously established fund category.

### 6.4 Non-Standard Restrictions

As bequests increase in size, the likelihood that a purpose restriction will be attached to the bequest increases. If a purpose restriction does not fit within any existing fund, it should be flagged for attention. Here are some points for consideration:

- Does the purpose seem highly impractical? Perhaps a court could lift the restriction for a more realistic purpose.
- Does the purpose involve other institutions? You could have legal liability for not complying with the purpose.
- Does the purpose appear to benefit private persons for non-charitable reasons?
- Does the purpose have an international aspect of any kind?
- Does the purpose involve potentially controversial matters, such as discrimination? The desired purpose may be prohibited in some jurisdictions.

### 6.5 Conduit restrictions

For a variety of reasons, donors sometimes make a bequest to charity A with the expectation or requirement that a portion of the transfer will be passed along to charity B. This is more common with trusts and other vehicles than with outright transfers at death. Most of the time, the transaction is completely acceptable, but potential issues do exist. Here is a short, non-exhaustive list of the concerns that charity A should have:

- Terrorism. Be aware of the Specially Designated Nationals list that is maintained by Treasury's Office of Foreign Assets Control
- Money laundering
- Intentional manipulation of charity B's public support status
- Avoidance of lobbying and other political activity restraints
- Disguising quid pro quo activities

## 7. Non-marketable asset or publicly traded partnership interest

### 7.1 Pull out your gift acceptance policy and procedures

Many of the considerations connected with bequests of a non-marketable asset or publicly traded partnership interest are identical to inter vivos gifts of such assets. If your charity has a good gift acceptance policy, it can be used to vet these interests. In fact, a testamentary

bequest of such interests is less likely to have problems than an inter vivos gift, since the asset will have a “step-up” in basis that generally eliminates or at least drastically reduces the problem of phantom income (taxable income in excess of cash distributions received). Bequests that come from an established trust not included in some recent decedent’s federal gross estate, however, should be treated very nearly the same as an inter vivos gift.

### 7.2 Probate exception to the self-dealing rules

Closely held business interests are difficult assets to use in connection with charitable remainder trusts and charitable lead trusts. Hopefully an attorney handling a matter that combines the two is aware of the very complicated, and dangerous, rules under §4941 of the tax code. It never hurts to make sure that the attorney is aware of the safe harbor provided by Treasury Regulation §53.4941(d)-1(b)(3) for the administration of an estate.

### 7.3 Interests that produce UBTI

Interests that produce UBTI (“unrelated business taxable income”) have a hidden cost associated with them. The charity will need to pay tax on its UBTI, and the charity should not accept any such interest unless there is an agreement to distribute enough cash to pay the tax. Accordingly, the interest should produce a positive cash flow, and the tax itself is not the hidden cost. Rather, the cost to the charity of preparing its income tax returns and financial statements will increase. Furthermore, interests that produce UBTI not infrequently give rise to issues that require senior management or even board attention. The right choice for your charity might be to structure a transaction where it receives a lesser amount of cash outright. Because the step up in basis eliminates the immediate tax cost to a transaction, this might be easier to negotiate than one would think.

## 8. Testamentary CGAs

Charitable gift annuities are simple, right? Unfortunately, the rules are more complicated than usually understood. If an estate proposes to purchase a CGA with encumbered property, competent legal review is essential. Surprising issues arise even if an estate proposes to purchase a CGA with cash. Nearly all of the issues impact only the donor’s side of the transaction, but it is always a good idea to help the donor’s attorney avoid problems before they arise. Two common problems can be mentioned here. First, the estate will want to have values fixed as of date of death, but a charity issuing CGAs in regulated states is only able to issue a contract with the rates and life expectancies in force at the time of the purchase. The passage of time from date of death

to date of purchase can cause a problem for determining the amount of the charitable deduction for death tax purposes, and the charity should make it clear that the computation provided by its software as of date of purchase cannot be used for death tax purposes. Second, the passage of time may mean that the purchase price must be increased by an interest component. Since the purchase of a CGA is not a "distribution" for income tax purposes, the interest will taxed at the fairly high estate income tax rates. Once the design is in place there is little the charity can do but to warn the attorney of the potential problems, but it is much preferable to put in place an estate plan that is sensitive to these issues.

### 8.1 Funding a CGA with an IRA

PLR 200230018 provides that an IRA can be used to purchase a post-death CGA for another person. Unfortunately, this requires an agreement in place prior to death, or some aggressive post-mortem planning.

## 9. Residuary bequests

If a charity has a large residuary bequest in a complex estate, obtaining a legal review is probably a good investment. But it is not uncommon for moderate sized estate to sprinkle the residue among ten or more charities, making the cost of a legal review more relevant. If a problem is spotted, getting a group of charities to cooperate on legal costs is one option, but this assumes that an identifiable problem emerges. Here are some suggestions for issue spotting even in more modest estates.

### 9.1 Tax clause

If all interests pass to charities, it would be rare for the estate to pay death taxes. If residuary interests pass partially to charities and partially to individuals, one common mistake made in the administration of an estate is to charge death taxes to the entire residue before division of the residue into shares. This treatment results in tax-exempt charities paying some of the death taxes generated by the interests that pass to individuals. A sufficiently clear tax clause in the governing instrument can produce that result, but the default state law rule and general interpretation rules typically shelter a charitable bequest from participating in paying estate tax.

### 9.2 Fees and expenses

Unlike death taxes, a residuary charitable bequest is ordinarily expected to bear its share of fees and expenses. As a percentage, these are much higher in the case of a bequest passing under an estate or revocable living trust than under a long term trust, although the

cumulative amount over time under a long term trust may be much higher. A commonly used guideline in Pennsylvania is from the *Johnston Estate*, 4 Fid.Rep.2d 6, 8 (O.C. Chester 1983), which can be found on the internet.

9.3 **Income taxes**

The portion of the estate passing to charity ought not to bear any income tax. One dangerous pitfall occurs when an election is made to treat an estate and a revocable living trust as a single entity following death. That election is good only for the later of two years or six months after the final determination of federal estate tax on a filed Form 706. After that election expires, the unlimited deferral of income tax on charitable bequests under an estate terminates and income tax can be imposed on the income earned on assets in the trust. If a bequest pays a share of the income tax the charity may wish to consider whether it is worthwhile asserting a claim against the fiduciary. If the source of the income was an item such an IRA paid to the estate or an installment note, very significant amounts of tax can be at stake.

10. **Abated bequests**

A bequest abates when a fund is inadequate to cover all of its obligations. The residue abates first, but fiduciaries are generally required to give notice to residuary beneficiaries even if there are no funds available to pass under the residue. The combination of a significant charitable bequest and significant abatement is unusual and is a signal that something major has gone astray with the donor's planning. There may be a very good reason for an unexpected loss of assets, such a crippling lawsuit or a prolonged nursing home stay, but sometimes third parties may have embezzled funds. If a significant bequest has evaporated, standard practice should be to speak with the attorney to see what happened. If the explanation is unsatisfactory, legal review may be warranted.

11. **Unfulfilled expectations**

Hopefully, the development staff keeps on top of major donors and their status. Just to be safe, someone should always take information about a gift coming under an estate or a trust and cross-check it against your organization's information. Unfortunately, major donors are sometimes targets for individuals interested in their wealth, and charities can be improperly cut out of long developed relationships at the last minute. Your records are the first line of defense. Here are some signs to watch for:

- Obviously, any information in your records that the donor intended to make a larger gift than the one reported to you
- A late change in the donor's attorneys
- A very late in life change in residence other than to a health care facility or continuing care center. This is the sort of thing that your mailing list should be designed to help you with. It is not a good sign if targeted mail to major donors comes back undelivered.
- The donor's poor health at the time a change may have been made
- Changes in family circumstances – remarriage, death of issue, family fights, etc.

Most respectable estate planning attorneys will be highly knowledgeable about these issues and forthright in dealing with them. If the attorney is dealing from a position of strength – meaning that the decedent knew what he or she was doing when your gift was changed – the attorney will be generally eager to demonstrate that everything was above board. There may have been a medical exam, the donor may have been videotaped stating his or her reasons for making a new estate plan, and so forth. It cost nothing to make the call. Unfortunately, it is my impression that undue influence cases involving charities are far more common than development officers generally appreciate. An unscrupulous individual can finagle hundreds of thousands, even millions, of dollars with very little risk of a criminal prosecution.

12. **Unexpected fulfillments**

The undue influence problem has a flip side. I would not celebrate prematurely if an unfamiliar donor makes a large gift to you just before his or her demise. Sometimes the addition of a charity short before death is legitimate; sometimes it is a transparent ploy. In complex cases where a change in an estate plan benefiting one individual may be vulnerable to claims about undue influence, an attorney working with that beneficiary will add one or more charities to the testator's estate plan to add additional dimensions to the story supporting a radical change. Just being a bystander to litigation of this sort can be awkward and expensive. On sufficiently sleaze facts, the charity might even consider renouncing to avoid bad publicity.

The issues might not be on the surface. In one case with which I had experience, a dying individual embittered with his business partner used a bequest to charity as part of a clever attack on a buy-sell agreement. Fortunately, the charity (which knew nothing of the buy-sell agreement

and was only too glad to talk to the gentlemen about his generous impending gift) wasn't sued for interfering with contracts, but on other facts matters might have gotten ugly.

13. **Charitable remainder trusts, charitable lead trusts and terminating charitable trusts**

These vehicles are very complicated, and it would be nearly impossible to train non-lawyers to effectively review these. One rule, however, should be inviolate. Never give an indemnification. Even highly competent financial institutions can (and do) make mistakes administering these. These mistakes are rarely caught, but the potential tax penalties that can be imposed when they are caught are just staggering. The charity can always direct the fiduciary to file an account. Further, the charity should try very hard to limit the refunding obligation to just the amount received.

Your charity may be asked to consent to a "commutation" of a charitable remainder unitrust. In a commutation, the trust is prematurely terminated and the assets divided between the life beneficiary and the charity. The two key facts to know are whether the life beneficiary is in good health and whether the distribution is a pure unitrust (i.e., not limited by fiduciary income). If the answer to either question is no, the offer should to commute should not have been made and the charity should not accept.

14. **Attorney general**

The attorney generals of the several states are quite different in how active they are in protecting the interests of charities, but all common law states inherited from England the rule that the attorney general has standing to protect the public interest. Pennsylvania has a particularly active attorney general involvement in charitable matters. While there can be no guarantee of active involvement by the attorney general's office, sending a letter to that office raising a possible concern is always an option to engaging a lawyer. Bear in mind that this will generally not be viewed as a friendly action by the attorney for the donor's estate.