

Bequests in Wills in Canada

Avoiding Legal and Ethical Problems When Supporting Good Causes

Righting Wills IV: Essential Tips for Practitioners

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Overview

- ❑ Introduction
- ❑ Legal Issues
- ❑ Ethical Issues
- ❑ Practical Considerations



Introduction

- ❑ most bequests are 'simple' – but there are issues and problems with some
- ❑ bequests are a middle class major gift
- ❑ bequests are part of Planned Giving or Gift Planning
- ❑ information, not legal advice, certainly not comprehensive



Overview of Planned Giving Vehicles

Planned giving vehicles

- bequests – gifts under will
- gifts of marketable securities
- life insurance
- certified cultural property
- gifts of real estate
- gifts of private company shares



Overview of Planned Giving Vehicles (cont)

- ❑ 'Charitable Remainder Trust' (CRT)
- ❑ gifts of residual interest
- ❑ interest free loan
- ❑ private foundation
- ❑ RRSP/RRIF
- ❑ charitable gift annuities
(self insured or reinsured)



Sample bequest scenarios

- ❑ whole estate to charity
- ❑ amounts to various parties and residue to charity
- ❑ part (eg. $\frac{1}{4}$ of residue) to charity
- ❑ \$100,000 cash to 1 charity
- ❑ \$100,000 cash to 10 charities



Sample bequest scenarios (cont)

- ❑ amount to charity, subject to conditions or restrictions
- ❑ contingent gift (\$ to charity if wife dies first)
- ❑ inter vivos gifts to charity and bequest at death
- ❑ spousal or other trust with gift over to charity



Simple situation

- ❑ elderly widow, no children, has will
- ❑ "I DIRECT my Trustees to pay the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) to [CHARITY], currently located at [address], for its general purposes. The receipt of an appropriate officer of [CHARITY] shall be a sufficient discharge of my Trustees." *
- ❑ charity finds out after death
- ❑ bequest management

* Not a precedent clause



Introduction - Why are bequests important to understand

- ❑ 90% of planned giving in \$ is bequests
- ❑ biggest donor concern is admin/fundraising costs –bequests are one of the least expensive vehicles in planned giving
- ❑ cost – bequest 1-5% vs. 50% for special events



Bequests - Advantage

- ❑ revocable, deferred
- ❑ death is a good time to give for many
- ❑ reduce taxes - tax receipt may coincide with substantial income tax liability on death
- ❑ flexible
- ❑ 'simple'



Bequests - Disadvantages

- ❑ you don't get to see the funds being spent in your lifetime
- ❑ charity does not get money now (revocable) and you don't get to help people now
- ❑ small amounts - hassle
- ❑ large amounts - tax benefit may be illusory in certain situations
- ❑ no current tax benefit



Intestacy – No will or no valid will

- ❑ desiring to help charity on death not good enough – you need a written will with bequest
- ❑ if no valid will, no bequest
- ❑ In Ontario see Succession Law Reform Act (SLRA)
- ❑ charity will not get a dime under SLRA
- ❑ charities and Professional Advisors need to encourage people to have proper wills



LEGAL

Important Legal Considerations in Bequests

- ❑ Correct Name of Charity
- ❑ Clarity in will drafting
- ❑ Capacity of testator
- ❑ Validity of will
- ❑ Charitable Status



Important Legal Considerations in Bequests (cont)

- Revocation of Wills
- Bequest property and acceptability
- Bequest restrictions and acceptability
- Due Diligence
- Disappearing will
- Disappearing assets
- Trusts, Residual Interests and Deferred Gifts



Important Legal Considerations in Bequests (cont)

- Taxes and bequests
- Use and abuse of Powers of Attorney prior to death
- Ownership can defeat testamentary intention
- Beneficiary designation can defeat testamentary intention
- Probate Avoidance
- Claims against estate



Correct Legal Name of Charity* *

- ❑ in bequest use correct legal name of charity
- ❑ most frequent problem with bequests
- ❑ search Ontario charities on MGCS database through Cyberbahn or Oncorp.
- ❑ Federal charities - Industry Canada provides free access
- ❑ For large gifts, lawyer may wish to review letters patent or SLP



Correct Name of Charity (cont)

- ❑ incorrect name puts executor in difficult position, can result in court costs and can result in loss of bequest or in sharing bequest
- ❑ how many charities have cancer in their name?
- ❑ not necessarily name on letterhead, website, or business card of charity.



Clarity of bequest clauses and will

- ❑ is will clearly drafted, not just bequest clause?
- ❑ avoid confusion and argument
- ❑ proper bequest clauses anticipating various common circumstances
- ❑ helps executor and charity



Capacity of Testator

- ❑ presumption of capacity, lawyer as witness
- ❑ assessment
- ❑ *Banks v. Goodfellow* (1870) test
 - 1) understand they are making a will
 - 2) understand nature and extent of property
 - 3) who might be expected to benefit
 - 4) no delusions that poisons affections



Validity of will

- ❑ provincial requirements
- ❑ 2 witnesses, of sound mind, over 18, who are not beneficiaries, together witnessing
- ❑ concern re: holograph wills, will kits etc
- ❑ if will is not valid then previous will or intestate succession – and perhaps no bequest.



Charitable Status – CRA and Quebec

- ❑ is it charity or non-profit?
- ❑ check CRA website and database
- ❑ watch for revocations – especially for non-filing of T3010
- ❑ Quebec registration if gifts from Quebec
- ❑ if not registered then no tax receipt and no tax benefit for estate



Revocation of Wills

- ❑ separation does not revoke will
- ❑ divorce – voids gift to spouse
- ❑ marriage revokes will unless wording that will made in contemplation of marriage
- ❑ new will or writing, burning or tearing
- ❑ alterations?



Bequest and Acceptability of Property

- ❑ gift acceptance policy
- ❑ land – environmental concerns
- ❑ flow through marketable securities, private corporation shares
- ❑ valuation issues and costs
- ❑ GINKY – gifts in kind (is it useful to charity or can it be sold?)
vs. refusal to accept



Bequest and Acceptability of Restrictions

- ❑ gift acceptance policy – may have limits
- ❑ has specific purpose been fulfilled, program discontinued?
- ❑ outside objects (ultra vires)
- ❑ power to vary clause, precatory vs. binding
- ❑ against public policy
- ❑ restrictions not compliant with other laws



Due Diligence

- ❑ if you are paying \$1 million for a business what sort of inquiries would you make?
- ❑ some donors or their advisors do due diligence
- ❑ how effective is organization?
- ❑ is charity involved with litigation or problems with CRA?
- ❑ do your own due diligence - review T3010, Google and Google ALERTS



Disappearing Wills

- ❑ best for charity to have copy of will or excerpt dealing with charity
- ❑ good if lawyer has original will
- ❑ not so good if client has will at home or in own safety deposit box
- ❑ accidentally or deliberately wills can disappear
- ❑ no will = no bequest



Disappearing Assets

- ❑ if charity to receive particular property and property is not owned by deceased's estate or property is destroyed then charity may, depending on wording not receive anything
- ❑ sometimes best to leave amount or part of residue rather than particular asset -if leaving particular asset be careful with wording.



Trusts and Residual Interests and Gifts Deferred after death

- ❑ trust for spouse, children, etc. and then after certain event charity gets funds.
- ❑ need to be careful in drafting and need to manage interests of income beneficiary and capital beneficiary
- ❑ carefully consider events relating to distribution of asset



Tax and Bequests

- ❑ bequest in will – tax credit against up to 100% of income in the year of the donor's death and the immediately preceding year
- ❑ matching the donation tax benefit with the tax – often not enough income to fully utilize donation receipt in year of death and immediately preceding year
- ❑ do not have to identify specific charities anymore to obtain deduction – trustees can have discretion as to selection but be careful



Ownership can defeat Testamentary Intention and Bequests

- ❑ Joe in his will leaves \$1 million to charity and \$1 million to son Mark
- ❑ Joe has one asset – large house (principal residence) (\$2,000,000) and has \$50,000 in cash in bank
- ❑ Joe owns house jointly with son Mark
- ❑ Joe dies – who gets what (is Mark 15, 25 and dependent, 40 and not dependent?) (presumption of advancement vs. presumption of resulting trust – intention?)
- ❑ Mark may get \$2 million dollar house and charity \$50,000!

Beneficiary designation can defeat Testamentary Disposition

- ❑ Joe has a will that leaves \$1 million to charity
- ❑ Joe has little by way of assets but has \$1 million dollar life insurance policy
- ❑ Who is beneficiary – son or estate.
- ❑ Joe dies
- ❑ beneficiary designation will determine who will get funds



Probate avoidance - can be bad for donor and undermine bequest in will

- ❑ probate 1.5%, income tax 46%
- ❑ common tools – insurance, jointly held assets with spouse and multiple wills
- ❑ dangers of poorly thought out approaches – income tax liability, fights over joint account
- ❑ probate avoidance commonly undermines value of estate and therefore funds that can be used to pay bequest



Claims against estate come before bequests

- debts
- tax liability
- Family Law Act*/ dependent relief
- quantum meruit claim



ETHICAL

Ethical issues

- ❑ Can a charity pay for the cost of preparing donor's will?
- ❑ Can a fundraiser or charity act as executor?
- ❑ Can charities recommend professional advisors?
- ❑ Can a charity employee do a will for a donor?
- ❑ Undue influence of charity vs. education
- ❑ Conflicts of Interest



Can a charity pay for the cost of preparing a donor's will?

- yes?
- concern about undue influence – is donor making donation on own free will or is there coercion, pressure etc.?
- is it acceptable use of charity's money?
- if undue influence bequest will be overturned and reputational problem for charity



Can a charity pay for the cost of preparing a donor's will? (cont)

- ❑ see article "Paying for Wills with Charity Funds" by UK Charity Commission
- ❑ cost/benefit, legal challenge, impression
- ❑ nothing is free, estate planning is not 'simple'
- ❑ occasionally done in UK – charity uses campaign to encourage will preparation and hopefully bequest



UK Suggested Precautions

- Charities must not be directly involved in drafting the will. Charities must give a written statement to the testator and the solicitor explaining how the charity will pay for the will and the procedures to be followed.
- The solicitor drafting the will must act for the testator only, not the charity, even if the charity is paying for the will;
- The solicitor must take instructions from the testator, not the charity and the instructions should be confirmed in writing;
- Before the will is executed, the solicitor must be satisfied that the will reflects the intention of the testator and that the testator understands the will.

UK Precautions (cont)

- The solicitor should not suggest making a bequest during the will drafting process;
- If the testator wants to make a bequest, he/she should be advised that he/she should make adequate provision for family members and dependants first.
- If the charity pays for the will, it should recommend that the testator instruct the testator's own solicitor. If the testator does not have a solicitor, the charity should recommend that the testator obtain independent legal advice, but not recommend any particular solicitor. Rather the charity should provide a list of solicitors or refer to an outside body such as a local Law Society.
- Witnesses to the will must not be charity employees or members.

<http://www.fia.org.au/Content/NavigationMenu/IndustryLinks/Research/Bequests/default.htm> **BEQUEST FUNDRAISING ETHICAL CONSIDERATIONS FOR PROMOTIONAL EVENTS** by Louise Steer LLM LLB BA(Hons)



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Can a charity recommend particular professional advisors?

- ❑ not one, but many
- ❑ can provide a list of professional advisors who are knowledgeable and don't recommend any one of them – donor must choose
- ❑ charity should advise donor that the charity is not assuming any independent responsibility for the conduct or competence of the lawyers whose contact information the charity is providing



Can a fundraiser or charity act as executor?

- ❑ no legal prohibition for fundraiser – CAGP code discourages
- ❑ does fundraiser have expertise?
- ❑ risk? negligence? is it worth it?
- ❑ does charity have power to act as trustee?
- ❑ claim of undue influence? even hand?
conflict of interest



Can a fundraiser or charity act as executor?(cont)

- ❑ if very large gift, charity is only beneficiary under will, estate assets are simple, donor would like charity to act as executor, then may be charity should be executor
- ❑ advantage is saving 2-5% that would be paid to executor (eg. \$300,000 if \$10 million estate bequest) and also having greater control over asset coming to charity
- ❑ get professional advice and beware that other smaller estates will want charity to act as executors as well

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Can a charity employee do a will for a donor?

- would be really inappropriate
- is legal advice being provided by charity?
unauthorized practice of law?
- charity could be sued for negligence
- far greater likelihood of challenge
- would definitely create suspicion



Can a charity employee do a will for a donor? (cont)

- ❑ who will prepare affidavit of execution?
- ❑ who will store will – charity should not?
- ❑ is donor getting independent legal advice (ILA)?



Undue Influence by charity vs. education

- ❑ pressure/coercion/undue influence vs. free will
- ❑ bequest can be overturned
- ❑ reputation of charity
- ❑ honour donor requests to limit contact or solicitation
- ❑ encourage donor to seek independent advice



Conflicts of Interest

- ❑ potential, actual and appearance of conflict of interest
- ❑ planned giving officer represents charity, not donor
- ❑ fundraisers should refuse/decline legacy gift to fundraiser from donor
- ❑ fundraiser moving from one organization to another – files, confidentiality, relationships



BEQUEST
SAMPLE
LANGUAGE

CAUTION

Precedent clauses should be modified by lawyer according to client's individual situation and intent and to be consistent with the particular form of will used and never should it be used "as is".



Basic Traditional Clause

"I DIRECT my Trustee(s) to pay the sum of _____DOLLARS (\$_____) to [NAME OF CHARITY], currently located at [address], for its general purposes. The receipt of an appropriate officer of [name of charity] shall be a sufficient discharge of my Trustee(s)."



Basic Traditional Clause – part or all of residue

"I DIRECT my Trustee(s) to pay _____ [insert number] parts [or all] of the residue of my estate to [NAME OF CHARITY], currently located at [address], for its general purposes. The receipt of an appropriate officer of [name of charity] shall be a sufficient discharge of my Trustee(s)."



Basic Modern Clause – Part 1- amount

To pay to [NAME OF CHARITY], currently located at [address], the sum of _____ Dollars (\$_____). I declare that the receipt of the person professing to be the Treasurer or other proper officer of the above-named charitable institution shall be a sufficient discharge to my Trustees who need not see to the application thereof. I specifically authorize my Trustees, in their absolute discretion, to satisfy all or part of this legacy by way of an in specie transfer or transfers, of one or more securities forming part of the residue of my estate at the time of my death.



Part 2 - Power to Vary – Organizational Change

If at the time of distribution, any of the organizations named in this my Will to receive a bequest has amalgamated with another organization or organizations, or has changed its name or location of its work, the bequest or share of residue provided for it shall not fail but my Trustees shall in their sole discretion pay the same to the organization they deem to be the successor organization.



Part 3 - Cy Pres Clause

If in the sole discretion of my Trustees, any of the organizations named in this my Will has ceased to operate or has never operated or been in existence (as distinct from having amalgamated, changed its name or location of its work) then my Trustees shall in their sole discretion pay the bequest or share of my estate to the organization which, in my Trustees' sole discretion, most clearly resembles the organization I intended to benefit.



Part 4 - Charity ceases to operate

If, in the discretion of my Trustees, any charitable institution named in my Will has ceased to operate (as distinct from changing the location of its work, changing its name, amalgamating or uniting with another organization or organizations) the gift to the organization shall lapse.



To Restrict or not to Restrict

- ❑ charity always prefers no restriction – best in terms of flexibility and maximizing use of resources
- ❑ is it better to ignore the issue or deal with it in material?
- ❑ charity can discuss problems with restrictions, suggest sample language for innocuous restrictions and also clauses on variation



Bequest with restriction

"I DIRECT my Trustee(s) to pay the sum of
DOLLARS (\$) to [NAME
OF CHARITY], currently located at [address], to be
used for and applied to the _____. The
receipt of an appropriate officer of [name of
charity] shall be a sufficient discharge of my
Trustee(s)."



Part 5 – (if restriction) Power to Vary Restriction dealing with Purpose

If in the opinion of the Board of Directors of _____ (hereinafter the "Board") it should become impossible, inadvisable, or impracticable to apply the said fund (principal or income for the said purposes, or if the Board is of the opinion that part of the said fund (principal or income) is not required for the said purposes, the Board shall use the said fund (principal or income), or such part thereof, in such manner as in its discretion may seem to the best advantage of the _____ for other purposes consistent with the spirit and intent of this bequest.



Power to Vary Restriction dealing with Purpose (alternate – short form)

I give, devise and bequeath to [NAME OF CHARITY] the sum of \$_____ to be used for the following purpose(s)

_____. If [NAME OF CHARITY] is unable to apply all or part of these funds for the specific purpose(s) stated herein, the balance of this bequest not so extended may be used for any purpose approved by the Board of Directors of [NAME OF CHARITY] .



Marketable Securities

It is also my wish and desire, without placing any obligation on my Trustees so to do, that my Trustees engage legal and accounting experts to advise them as to the income tax consequences and benefits under the *Income Tax Act* (Canada), as amended, or any successor legislation, and any other tax consequences of any kind pursuant to any legislation of any jurisdiction, of providing shares or marketable securities in specie directly to a charitable beneficiary under my Will instead of liquidating such shares or marketable securities and donating the proceeds and I authorize my Trustees in their sole discretion where a charity is named under this my Will to donate such shares or marketable securities in specie.

or

My Trustees shall pay to _____ \$50,000 in cash, or the equivalent value in marketable securities, or cash and marketable securities in such proportions as my Trustees in their absolute discretion decide.



Reduction in Bequest resulting from gifts during lifetime and after signing will

My Trustees, when determining the amount of the legacies in Clause X of this Will, shall take into account the gifts I have made after the date of this Will to any of the legatees (including charitable institutions) named there, and my Trustees shall reduce the amount of any legacy in Clause X by the amount of the gifts received by the legatees from me during my lifetime and after the date of this Will. For greater certainty, it is my intention that each legatee receive in total the amounts provided in Clause X by way of inter vivos and testamentary gifts.



Preventing Duplication of Bequests

It is my intention and my wife's intention that the aforementioned bequests which appear in both my Will and her Will shall not be duplicated and shall not be paid by both of our estates.

OR

I wish to advise my Trustee that my husband's Will makes provision for a similar legacy to that here provided. If my husband and I die within thirty (30) days of each other or in circumstances such that the order of our deaths cannot be determined, we intend that legacy to be paid once only either out of my husband's estate or out of mine, and I direct my Trustee to make such arrangements as are necessary to give effect to that intention.



Charities Directorate Newsletter #27 – Bequest to Foundation yet to be set up

Q10. If the terms of a person's will specify that property is to be used to establish a charitable foundation, can a donation receipt be issued if the charity is registered?

A10. Yes. The fact that the foundation did not exist at the time of the individual's death will not, in and of itself, preclude a donation from otherwise qualifying as a gift by will for the purposes of subsection 118.1(5) of the Act as long as the foundation is a qualified donee at the time the gift is completed. The completion of the gift should occur within a reasonable period after the date of death.



Bequest to own Private Foundation

To pay or transfer the residue of my estate to the (*name of charitable foundation*) Charitable Foundation, being a charitable organization which I intend to incorporate during my lifetime, provided that if the said Foundation has not been incorporated by me during my lifetime, then I direct my Trustees to constitute, found and form a charitable organization (whether it be a corporation, a trust or other institution), which charitable organization shall be called the (*name of charitable foundation*) Charitable Foundation, whose objects shall be exclusively charitable, and to pay and transfer the residue of my estate to the said (*name of charitable foundation*) Charitable Foundation, for its own use absolutely and I nominate and appoint (*name of trustee/director of charitable foundation*), (*name of trustee/director of charitable foundation*) and (*name of trustee/director of charitable foundation*) ... [see next slide]



Bequest to own Private Foundation (cont)

to be the first Trustees or Directors of the *(name of charitable foundation)* Charitable Foundation; and I declare that my Trustees of this my Will shall have the full power and authority to effect any and all acts that they in their absolute discretion deem necessary or advantageous to carry out and give effect to the foregoing and following provisions of this paragraph *(paragraph number)* of this my Will; and I further declare that the objects of the *(name of charitable foundation)* Charitable Foundation shall be exclusively charitable and, without limitation of such objects, it is my wish that the Trustees or Directors of the said Foundation consider the application of income, where in their absolute discretion they consider it advisable, for the benefit of the *(specify)* for *(specify)*. If the Foundation has not been incorporated by me during my lifetime, then until such time as the said Foundation is established by my Trustees, I direct that the income derived from the residue of my estate be applied, in the absolute discretion of my Trustees, for exclusively charitable purposes for the benefit of *(specify benefit to be derived from income from residue of estate)*.

From Histrop, Estate Planning Precedents



Residue to a number of charities

If my said *(specify party)* predeceases me or survives me but dies within a period of thirty (30) days from the date of my death, upon the death of the survivor of my said *(specify party)* and me, to divide the residue of my estate into the number of equal parts as shall be required to give effect to the following distribution:

(i) *(number of equal parts of residue to be transferred)* of such equal parts shall be paid or transferred to *(name of charity)*;

(ii) *(number of equal parts of residue to be transferred)* of such equal parts shall be paid or transferred to *(name of charity)*; ...



Residue to a number of charities (cont)

(iii) *(number of equal parts of residue to be transferred)* of such equal parts shall be paid or transferred to *(name of charity)*; and

(iv) *(number of equal parts of residue to be transferred)* of such equal parts shall be paid or transferred to *(name of charity)*.

I declare that the receipt of the Treasurer or other proper officer for the time being of each of the above named charitable institutions shall be a sufficient discharge to my Trustees, who need not see to the application thereof. I further authorize my Trustees, in their absolute discretion, to satisfy such distribution of the residue of my estate to one or more of such charitable institutions by way of an in specie transfer or transfers of one or more securities forming the residue of my estate at the time of my death.

From Histrop, Estate Planning Precedents



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Power to Invest – when endowment

The Board of Directors of _____ [the CHARITY] should be empowered to invest and pool the funds in accordance with the policies established by the Board of Directors from time to time in order to maximize the investment benefits and income derived.



Bequest – type of gift is concern to charity – eg. Real estate

If my bequest is deemed to be not appropriate for _____ charity, I authorize my executor to sell at auction or have disposed of in like manner, and the money realized, gifted to _____ charity for the use and purposes of _____ as its Board of Directors may determine.



Alternate Permission to Dispose of Contentious Property Clause

If my gift is deemed, by _____ [NAME OF CHARITY], to be in an inappropriate form, I authorize my Trustees to sell the said property, and pay the money realised to _____ [NAME OF CHARITY].



Pledge Language

I have pledged a gift of _____ to _____ [insert name of charity]. To the extent that, at the time of my death, I shall not have paid the amount of such pledge in full, I direct my Trustees to pay in full the unpaid balance of such pledge to _____ [insert name of charity] or its successor organization.



Pledge Language - alternate

I authorize my Trustees at any time within the five (5) years following my death to exercise their absolute discretion to pay some or all of the amounts that I have pledged to charitable organizations or for charitable objects that are left unpaid at my death, notwithstanding that the pledges may not be legally binding on my estate.



Multiple Wills

- ❑ Primary (Public) and Secondary (Private)(private company shares)
- ❑ what if bequest(s) under Secondary wills and shares sold?
- ❑ what if bequests under Primary will and not enough assets to pay bequest
- ❑ clause dealing with insufficiency of one will to pay bequests then incorporate provisions in the other will



Multiple Wills (cont)

To the extent that those assets of my Primary Estate, which are governed by the provisions of my Will executed on the _____ day of _____, 2008 (hereinafter called my "Primary Will") which Primary Will was executed prior to this Will, are insufficient to fully satisfy the gifts set out in Paragraph _____ thereof, I direct my Trustees to satisfy any such deficiencies with the assets held by my Trustees under this Will and to that extent I incorporate such provisions of my Primary Will into this Will by reference, mutatis mutandis.



Newsletter # 27 – Bequests and Gifts In Kind (eg. Marketable securities)

Q7. For gifts in kind, the value of the gift is considered to be its fair market value immediately before death and not when the property is subsequently received by the charity.



Newsletter # 27 – When to issue tax receipt

Q8. Can a charity issue a receipt prior to the transfer of property by the deceased's estate?

A8. No. However, a donation tax credit can still be claimed on the deceased taxpayer's final return. Where the charity receives a letter from the estate advising of the gift and its value, the registered charity can issue a letter to the estate acknowledging the gift and stating that it will accept the gift.



Newsletter # 27 – trustee discretion in bequests

Q9. If a will allows trustees to decide on the way property is disposed of, either to a charity or to another organization, can a donation receipt be issued for the property that the trustees donate to a charity?

A9. Yes. Where the trustees exercise their discretion to donate property to a charity, a receipt can be issued for the fair market value of the property and a donation tax credit may be claimed on the trust return filed by the estate. A donation tax credit can be claimed on the deceased taxpayer's final return where the terms of the will provide ...



Newsletter # 27 – trustee discretion in bequests (cont)

that a donation of a specific property, a specific amount or a specific percentage or part of the residue of the individual's estate is to be gifted to a charity. In a situation where the individual's will directs his or her trustee to make a donation to charity without identifying a particular charity, this, in itself, would not preclude the donation from otherwise qualifying as a gift by will.



More Information

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