



Bequests – avoiding problems with the ultimate planned gift

A bequest is a gift under a will to a charity. Bequests are revocable in that a subsequent will or codicil can cancel a bequest in an earlier will. In many cases individuals and their estates can have a substantial tax burden on death and bequests can reduce those taxes. Bequests can be both very simple and flexible.

Bequests have been called a “middle class gift” in that they allow average Canadians to make a major gift. While many high net worth Canadians can afford during their lifetime to make a major gift to a charity, many middle class Canadians cannot and are concerned about whether they will have enough money during their lifetime to maintain their lifestyle and pay for unanticipated costs. Therefore a bequest, which only occurs on death, provides for many Canadians, whether high net worth or of average means, a great vehicle to make a major gift to a charity or cause you care about.

Some of the disadvantages of a bequest are that you do not get to help people today and see the funds used immediately, as the gift is only made after your death. You also do not get an immediate tax benefit; it is only your estate that benefits after you die.

While bequests can be a relatively simple planned giving vehicle, it is important that people obtain legal advice and the assistance of a lawyer in preparing a will, whether or not making a bequest to a charity is considered.

Here are some of the top issues or concerns with bequests in a will to a charity:

1. Use the correct legal name of the charity, otherwise there can arise uncertainty about the gift and conflict between different charities claiming to be entitled to the bequest.

2. Ensure that the will is drafted clearly and properly to avoid confusion and possibly litigation over the estate.
3. Follow all provincial requirements for making a will or your will may not be valid and the bequest may fail and other provisions may not be enforceable.
4. Ensure that the "charity" is in fact a Canadian charity registered with the Charities Directorate of the Canada Revenue Agency or your estate will not receive what may be a very valuable official donation receipt.
5. Wills are often unintentionally revoked (as in the case of remarriage, except in certain circumstances) and if a will is intentionally or unintentionally revoked then the bequest in it will fail.
6. All charities accept cash bequests, however, if you are planning on gifting real estate, personal property or private company shares, etc. then it is important that you discuss your proposed gift with the particular charity ahead of time to ensure that the charity can properly accept such property and either sell it or put it to good use.
7. To achieve the greatest effect it is usually best not to place restrictions on your gift and instead select a very reputable charity that you trust and give them the discretion to use the gift in the manner that will achieve the greatest good. However, if you wish to impose restrictions with respect to your gift, you should discuss them with your legal advisor and the particular charity, as certain seemingly benign restrictions may be impractical or impossible for the charity to comply with and it may have to reject the gift. Alternatively, the charity may accept the gift but the restriction may substantially reduce the effect of the gift. If a restriction is included in a will then there should also be a clause in the will providing that if the restriction can no longer be complied with or the restriction no longer makes sense that the charity's board of directors has the ability to vary the use of the gift.

8. Not all Canadian charities are equally accountable, transparent, effective and efficient and you should carefully investigate any charity that you are planning to make a substantial bequest to in order to ensure that your funds will be well spent.
9. Keep your will in a safe place, preferably in a fireproof safe at a lawyer's office, or your intentions and the bequest may never be known.
10. If you are making a bequest that includes all or a substantial part of your estate, you should get legal and accounting advice as to whether your estate will be able to properly utilize the tax credit. From a tax efficiency perspective you may be better off making some smaller gifts during your life time in combination with a bequest.

Bequests are a wonderful way to benefit charities that you care about. When preparing your will, discuss with your legal counsel whether a bequest may be appropriate in your circumstances.

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