



Beyond Graduation. Beyond Campus. Beyond Boundaries.

## PRACTICAL IDEAS FOR ORGANIZING YOUR ESTATE PLAN... AND DOING GOOD IN THE WORLD

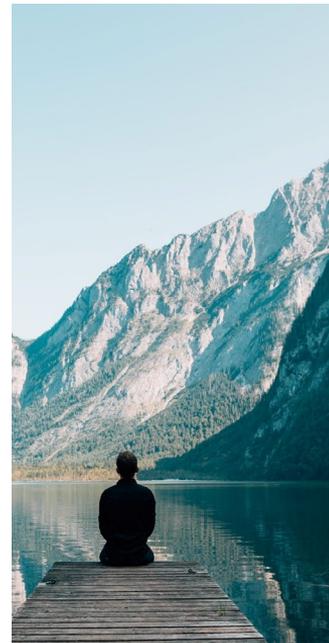
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## Core Values and Goals of Estate Planning

- Provide for the people we care about
- “Control” our legacy by providing designations and directives for our assets
- Peace of mind re: decisions about our health and finances if we become incapacitated
- Do good in the world
- Reduce/avoid taxes



## 2020= Opportunity for Heightened Awareness/Clarity



Time to think, and act, on some of the most basic estate planning “to do’s”

Do you have estate plan documents?

Proper beneficiary designations and account titles?

Life events reflected? (Marriage, divorce, retirement, second marriages, blended families, births, deaths)?

Special needs – and a plan that considers available benefits?

Real estate holdings - especially out of state?

Business ownership considerations?

**Have you shared your estate planning details with key people in your life?**

Many are also, contemplating, more than ever, how to be *men and women for others*

- Estate giving
- Active giving
- Engagement; Volunteering; Mentoring

## Key Components of Estate Plans and Related Practical Tips

- Will/Living Trust
- Health Care Decisions – Living Will or Health Care Power of Attorney
- Financial Decisions – General Durable Power of Attorney for Financial Matters
- Inventory of Assets/Net Worth Estimate
- Transfer of Business Interests (if any)
- Arrangements for Loved Ones with Special Needs
- Impacting Causes/Organizations Meaningful to You



# Last Will and Testament (and Revocable Trust)



## Importance:

Creating a Last Will and Testament is a good idea for all adults, but especially for anyone who:

- Has a minor child and wishes to appoint a guardian in the event of their death,
- Has assets that they would like to pass to someone other than intestate beneficiaries (i.e., often unmarried individuals and blended families), or wants to hold assets in trust for certain (often minor) beneficiaries after they pass.

## Practical Organization Tips/Considerations:

What does a Will do?

- Names beneficiaries to receive your assets when you die.
- Designates a guardian (and a successor guardian) for any minor children.
- Appoints a personal representative (and a successor) to execute your plan upon your death.

## Probate Avoidance Option for Simple Estates:

In lieu of a revocable trust, some people with simple assets can use only a Last Will and Testament with some simpler probate avoidance strategies.

These strategies include:

- Transfer on death deeds for Wisconsin real estate; and
- Transfer on death designations for significant financial accounts

# Revocable Trust

## Importance:

- A revocable trust, in addition to a Will, can provide **privacy** for estate plans (wills are public documents) as well as help with **probate avoidance** (one of the best gifts you can give to your beneficiaries).
- Note: assets must generally be retitled into the name of the trust for probate avoidance.

## Practical Tips/Considerations:

- A trust may also allow for more seamless management of your assets by your trustee while you are living, incapacitated or simply living with declining faculties.
  - Trusts that extend past your lifetime for your beneficiaries can help protect those assets from creditors, divorces and reckless spending.



## Financial Decisions – Durable Power of Attorney

### Importance:

- Sometimes called a financial power of attorney
- Appoints someone as your agent to handle all decisions other than health care decisions upon incapacity (i.e., Alzheimer's or in a coma).
- Can allow someone else (on your behalf) to sign your tax return, transfer money between bank accounts, pay your mortgage, sell your home, etc.

### Practical Tips/Considerations:

- Note: Fiduciary responsibilities limit what your agent may do with your assets.
- Note: Can be drafted to be effective immediately or only upon incapacity.
- Necessary document for anyone over age 18 (i.e., do you have children or grandchildren who should have this?)
- List one agent and at least one successor agent
- Update when agents can no longer serve (deceased or too old) or when children become adults and can serve for you instead of previously appointed agents.
- Appoint one agent with a successor or co-agents? Consider listing children as agents in successive order instead of serving together. This can help prevent fights as only one has the legal right to make decisions.



## Health Care Decisions – Power of Attorney and Living Will

### Importance:

- Appoints someone as your agent to handle all health care decisions upon your incapacity.
- May include organ donation preferences.
- Should include a HIPAA waiver.
- Necessary document for anyone over age 18 (i.e., do you have children or grandchildren who should have this?)
- Update when agents can no longer serve (deceased or too old) or when children become adults and can serve for you instead of previously appointed agents.
- Helps avoid the red tape, time and expense of guardianship proceedings.

### Practical Tips/Considerations:

#### *Living Will*

- Many clients like to complete this document for end of life wishes.
- Essentially asks to be “let go” when you are very far gone (i.e., terminal illness with no likelihood of recovery or persistent vegetative state).

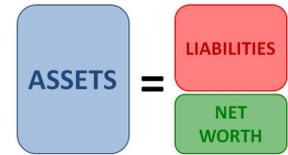


## Storage of Estate Planning Documents

- Be sure to store your original documents in a safe place and tell your personal representative and/or trustee where to find the documents.
- Options include storing at your attorney's office, filing with your county's Register of Probate or in a flood proof and fireproof location such as a safe or a metal file cabinet.
- Generally advise against safety deposit boxes as opening them can be cumbersome.
- Also give copies of your health care and durable powers of attorney to your initial agent. Copies of these documents are just as legally effective as the originals.



# Inventory of Assets/Net Worth Estimate



## Importance:

No matter what your situation, the first step toward getting your estate plan started is to assemble key pieces of information about your personal circumstances, assets, and debts

## Asset Inventory:

1. Bank accounts: bank name and contact info; titling of account; account number and type; beneficiary; FMV; total in bank accounts
2. Brokerage accounts: brokerage firm name and contact info; titling of account; account number; beneficiary; FMV; total in brokerage accounts
3. Securities in certificate form: name of stock, bond, etc.; titling, cusip number; number of shares; FMV; total securities in certificate form
4. Individual retirement accounts: investment firm contact info; type (IRAs; Roth IRAs; Rollover IRA) and account number; account owner; beneficiary; FMV; total in IRAs
5. Employer sponsored retirement plans and retirement benefits: type (i.e. employer-sponsored plans (401(k), SEP, SIMPLE, 403(b) and 457 plans, and others); employee stock option; deferred compensation; pension/profit-sharing; veterans/govt. benefits); employer plan contact info; account no.; participant; beneficiary; value; total employer sponsored retirement plans and retirement benefits
6. Insurance: type (life; medical; disability; homeowners/renters; auto); insurance firm contact info; policy no./type (group term; individual term; individual whole life (cash value); survivorship (second to die)); policy owner; beneficiary; loans on policy; net (of loans) face amount; total insurance net face amount
7. Real estate: type of property and location; titling; FMV; mortgage amount; value (net of mortgage); total real estate

## Inventory of Assets/Net Worth Estimate

### Asset Inventory (continued):

8. Safe deposit box: bank contact info; box no.; contents; executor; location of key
9. Personal property: type (autos; home furnishings; collectibles; other); titling; description; FMV; total personal property
10. Unsecured debts: lender contact info; type (credit cards, personal lines of credit, etc.); balance outstanding; total unsecured debts
11. Debts owed to you: borrower; contact info; notes; balance outstanding; total debts owed to you
12. Business interests: business contact info.; titling; ownership %; entity type (sole proprietorship; partnership; C corporation; S corporations; limited liability company; limited liability partnership); FMV; total business interests
13. Total Net Estate Value: equals the total value of your assets less outstanding indebtedness

### Practical Tips/Considerations:

1. If completing the inventory as a couple, and you both have significant separate property, it may be easier to prepare two separate inventories.
2. Keep a copy of your asset inventory in a safe place and tell someone you trust where to find it.
3. Your asset inventory is a snapshot in time; periodically review your asset inventory to update any additions or deletions of assets or changes to information.

## Titling of Assets and Beneficiary Designations

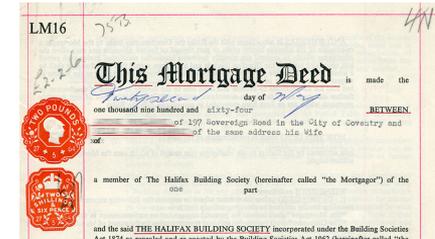
### Importance:

The titling of assets and designation of beneficiaries is an important part of the estate planning process to ensure your plans reflect your wishes. Asset titles and beneficiary designations determine:

1. Who will receive the property upon the owner's death
2. If probate is required
3. The amount of property that is subject to probate administration
4. The amount of estate tax liability upon death
5. The amount of administrative expenses and attorney's fee that the estate pays
6. How much income tax and gift tax is due

### Examples:

1. Title real estate in the name of your trust (update homeowner's insurance) or add a TOD beneficiary to your real estate
2. Add POD beneficiaries to bank accounts
3. Assign LLC membership interests to the trust
4. Retitle stock certificates in the name of the trust
5. Change life insurance beneficiary to the trust
6. Change title of brokerage accounts to the trust or add TOD beneficiary
7. Retirement accounts (IRA, 401(k)) – varies
8. Add TOD beneficiaries to money markets and CDs





## Transfer of Business Interests

### Importance:

If you have your own business, you may wish to keep the business within your family or sell it, before or after you pass away. Careful planning will ensure the business can stay up and running and be protected from large, unexpected tax liabilities.

### Practical Tips/Considerations:

1. Because of the complexity of issues surrounding this topic, it is advisable to consult an attorney or tax advisor with special expertise in this area.
2. **Leaving a business to co-owners:**
  - Use of buy/sell agreements: If your business has one or more co-owners, you might consider establishing an agreement that upon the death of any owner, their interest is automatically purchased by the other owner(s).
  - This arrangement can ensure that beneficiaries of the deceased owner (including spouses or other family members) don't unintentionally become owners.
  - Life insurance can be purchased or an irrevocable life insurance trust (ILIT) can be established to cover these buy-sell agreements and provide necessary liquidity.

# Transfer of Business Interests

## 3. Leaving a business to family:

- Create a succession plan to address the systematic transfer of the management and ownership of the business.
  - Consider: (1) which family member(s) will run the business; (2) who will own the shares; and (3) how can taxes be mitigated on the transfer?
  - Must take financial, human and enterprise capital into account.
- Start with a business plan for the future of the business
  - Have numbers and projections in place for future growth
  - Transfer now or later? The value of your business may continue to grow between the time you plan your estate and when you pass away; your taxable estate will include the value of the business as of your date of death
  - Even with the current sizeable gift and estate tax exemptions, lifetime gifts may allow the business owner to leverage the gift and estate tax before the business appreciates more substantially; consider a gradual approach in transferring interest and control
- Management succession planning may include:
  - Development, training, and support of successors
  - Delegation of responsibility and authority to successors
  - Outside directors/advisors to bring objectivity to the process (when necessary)
  - Maximizing retention of key employees through equitable compensation planning for management, family/non-family employees, and active/inactive shareholders
- Ownership transfer planning considerations may include:
  - Coordination between who will own the business and who will manage the business
  - Consideration of the best interests of the business and the owner's family
  - Timing of a transfer of the business during your lifetime - may provide the opportunity to consult with the successor(s), and generally reduces the risk of a discounted sale of the business
- Steps to help minimize taxes and avoid probate if passing your interest upon death – ILITS, GRATS, GRUTS, FLPs, FLLCs
- Equitable division of remaining estate assets needs to be considered for heirs uninterested or not included in business ownership

# Arrangements for Loved Ones with Special Needs

## Two types of Special Needs Trusts (SNTs):

### 1. First-Party SNTs - funded with property of the trust beneficiary (inheritance, court settlement, etc.)

- Also useful when a person without a prior disability owns assets in his or her own name, later becomes disabled, and needs to qualify for public benefits with an income or asset limitation
- These SNTs are authorized under federal law and are also commonly called self-settled SNTs, Medicaid payback trusts, OBRA '93 trust and d4A or d4C trusts (referring to the USC section authorizing them)
- Can only be used for the “sole benefit” of the beneficiary; may be created and funded only for those who meet the government’s definition of “disabled” and are under age 65 when the SNT is create
- The SNT must specify that after the beneficiary’s death, all amounts remaining must first be used to repay state Medicaid programs for benefits received, and only after that may any remaining balance be distributed to other beneficiaries

### 2. Third-Party SNTs - funded with property from someone other than the SNT beneficiary (typically parents, but can be grandparents, siblings, friends, etc.)

- Used by those doing advance planning for a loved on
- Can be included in the Will, a Living Trust or drafted as a stand-alone SNT
- Typically funded upon the death of the beneficiary’s parents or the other individuals who established the SNT
- Stand-alone trusts exist during the lifetime of the person creating the trust and allow for lifetime and post-mortem gifts from multiple sources
- Upon the death of a third-party SNT beneficiary, the trust is not required to repay the state Medicaid program for benefits received, making this a useful planning tool for people who want to set aside property for a beneficiary with disabilities, preserve essential public benefits and remain in full control of the remaining SNT assets upon the beneficiary’s death.

# ATTENDEE POLL

## Impacting Causes and Organizations through Charitable Giving

- Why? Legacy/Personal Fulfillment/Generational-Connection/ Avoidance/Reduction of Taxes (relevant in donor's lifetime; in donor's estate and on assets transferred to next generation)

### Your Philanthropic Compass

- What problems/concerns do you want to help resolve in your community, in the world?
- In what way(s) do you think you could guide future generations, within your family and more broadly?
- What experiences/opportunities have helped you in your own personal and professional development and how could your philanthropy support or maintain those opportunities?



## Charitable Giving Trends

- Estate tax: very high exemption = very limited number of individuals affected
- Service through Volunteering (Boards, Mentoring)
- Lifetime Giving – Resources:
  - Retirement Accounts
  - Donor Advised Funds
  - Life Insurance
  - Appreciated Stock
  - Real Estate



## Retirement Accounts

- Retirement accounts are often people's most valuable assets.
- Thus, updating beneficiary designations for these accounts can be extremely important.
- Retirement accounts pass to whomever you have listed as a beneficiary and only by default under your last will and testament or revocable trust.
  
- New rules for inherited retirement accounts in 2020. The new rules affect distributions for inherited retirement accounts.
- Preference for passing retirement accounts directly to named beneficiaries. Exercise caution (and a good attorney) if retirement accounts are being paid into your revocable trust to ensure best result.
  
- **Alternative:** Retirement accounts can be a great asset to give to charity. Even in non-taxable estates (i.e., less than \$11.58 million for an individual and \$23.16 million for a married couple), you can avoid taxes on distribution of these assets if you list a charitable beneficiary.



## IRA Charitable Rollover During Life

- Distributions from an IRA are usually treated as taxable income.
- However, you can avoid this taxable income by making a Qualified Charitable Distribution (QCD).
- A QCD is a direct transfer of funds from your IRA trustee to an eligible charity.
- Your IRA administrator must transfer the money directly to the charity. Simply contact your plan administrator and tell them you would like to make a charitable donation from your IRA. Typically, they will supply you with a distribution form for you to fill out and return.
- At the end of the year, the administrator will provide you with a Form 1099-R so you can report it on your taxes. The distribution will go on your Form 1040 tax return, where you will report the distribution as a non-taxed QCD.
- In order to be eligible to receive a QCD, a qualified charitable organization must meet requirements under section 501(c)(3) of the Internal Revenue Code.
- Certain charities are not eligible to receive QCDs, including donor-advised funds, private foundations, and supporting organizations.
- You are not allowed to receive any benefit in return for your charitable donation. For example, if your donation covers your cost of playing in a charitable golf tournament, your gift would not qualify as a QCD



## Qualifying for an IRA Charitable Rollover

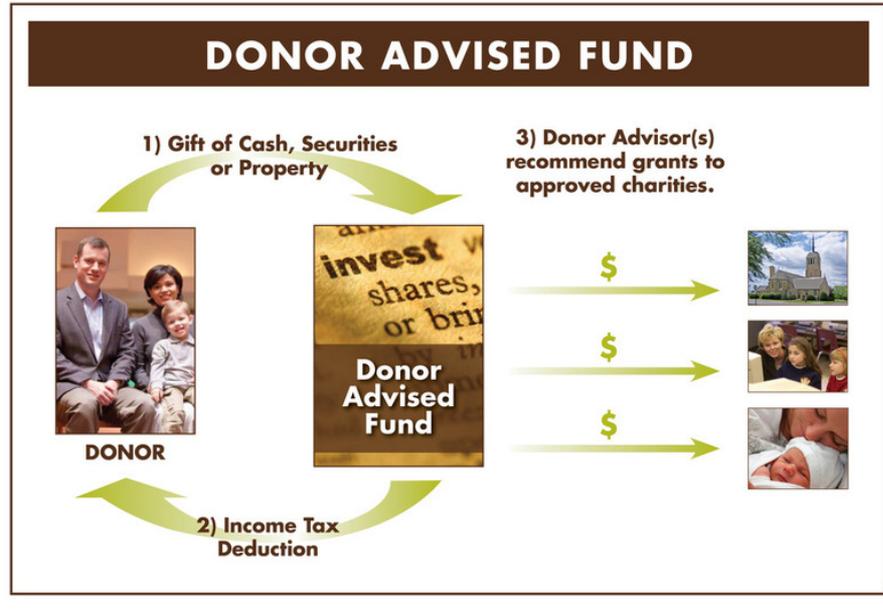
In order to qualify, a person must adhere to certain requirements:

- The donor must be at least aged 70 ½ at the time of the gift.
- Distributions have to be made from the IRA trustee directly to the charity. If a distribution check is made payable to you, the distribution would NOT qualify as a QCD and would be treated as taxable income.
- Distributions must come from a traditional IRA or Roth IRA (though Roth IRA contributions are less desirable from a tax perspective). Some plans — such as 401ks and 403bs — are not eligible. Alternative: roll over assets from your 401k to an IRA. Then initiate IRA charitable rollovers in subsequent years.
- The charitable distribution must be completed by December 31 in the year it is claimed.
- Total charitable distributions cannot exceed \$100,000, per taxpayer per year. If a married couple files jointly, each may contribute up to \$100,000. Any amount over this cannot be excluded from gross income.
- Donors can exclude their contribution from gross income but cannot claim a charitable deduction.

## Donor Advised Funds (\$37 billion in 2018; 86% increase over past 5 years)

DAFs are investment accounts established at and administered by a 501(c)(3) public charity that

- Allow donors to make an **irrevocable** charitable contribution,
- **Receive an immediate tax deduction** and recommend grants from the fund over time.



## Donor Advised Funds (Continued)

### PRACTICAL TIPS/CONSIDERATIONS:

- **Use to offset a significant taxable event** - such as sale of a business, conversion of a tax-deferred IRA to a ROTH IRA, etc. - with an immediate income tax deduction.
  - Ideal if time is of the essence before year-end and donors have not already made other charitable plans.
- As a gift to public charity, DAF donors can take a charitable income tax deduction of up to 60% of adjusted gross income (AGI) on gifts of cash and up to 30% of AGI on gifts of stock or other appreciated assets.
- DAFs cannot be used to obtain personal benefits, like athletic seating points or gala attendance
- DAFs can be the recipient of an IRA distribution, but a direct IRA distribution cannot be excluded from donors' taxable income if made to DAF (i.e. IRA rollovers *are not* allowed)
- Personal pledges can be satisfied from DAFs *with qualifications*. Section 4 of IRS Notice 2017-73 effectively allows DAFs to make grants that satisfy pledges if the DAF sponsor does not reference the pledge in the grant letter or check.

## Life Insurance

**ACCEPTED:** Universal and Whole Life Policies of ANY face amount that are FULLY PAID UP, or donor is willing to pay remaining premiums.

### METHOD: TRANSFER OWNERSHIP TO CHARITY

- Pro to owner/donor: donor is eligible for an immediate charitable contribution tax deduction equal to the fair market value of the policy (similar to Cash Value) or her premiums paid, whichever is less.
- If premiums are still owed on the policy, you can take tax deductions if you remain the payor—in other words, continue paying premiums for the charity. Plus, the policy is removed from your estate for estate tax purposes.
- Pro to the charity: It now controls the contract, which means it can name itself the beneficiary or cash out the policy.

OR



## Life Insurance (Continued)

NAME CHARITY A BENEFICIARY OF YOUR LIFE INSURANCE POLICY, BUT RETAIN OWNERSHIP OF POLICY

**Pro for the owner:** You still own the policy. This gives you access to any cash value accumulation while you're living and gives you the option to change the beneficiary if you want. **Con for the owner:** No opportunity for immediate tax deduction.

**Pro for the charity:** The charity receives a lump sum payment from the death benefit. **Con for the charity:** Beneficiary designation can be changed by donor.

## Gifts of Appreciated Publicly Traded Stock

- For philanthropically-minded investors, publicly traded, long term (i.e. held for more than a year) appreciated stock can be among the most tax-advantaged assets to donate to charity.
- Contributing such assets may enable the donor to enjoy a current year tax deduction for the stock's full FMV (if the donor itemizes / up to 30% of AGI) and potentially eliminate capital gains tax liability on the sale of the stock, while allowing the charities they support to receive the most money possible.
- Can provide donors an opportunity to diversify their portfolios without incurring capital gains tax on the donated stock appreciation.
- Most common gift = Cash      vs.      Smartest gift = Stock



## Example: Cash versus Appreciated Stock

Mary and Ann each purchase stock for \$30/share and sell after a year for \$50/share, resulting in \$20/share appreciation.

Mary sells the stock and donates the cash proceeds, realizing capital gains equal to the appreciation and liability for long-term capital gains taxes.

Ann donates the stock directly to charity, by-passing capital gains tax on the appreciation and receiving a tax deduction equal to the stock's full FMV.

	Ann donates stock directly to charity	Mary sells stock and donates cash proceeds to charity
Current FMV of stock	\$50,000	\$50,000
Capital gains tax at 15%	\$0	\$7,500
Charitable donation/deduction	\$50,000	\$42,500
Tax Savings: value of deduction less capital gains tax paid <small>(*28% tax bracket assumed)</small>	\$14,000	\$11,900
Net tax savings	\$14,000 (\$9600 add'l benefit)	\$4,400

# Using Closely Held Stock for Charitable Giving

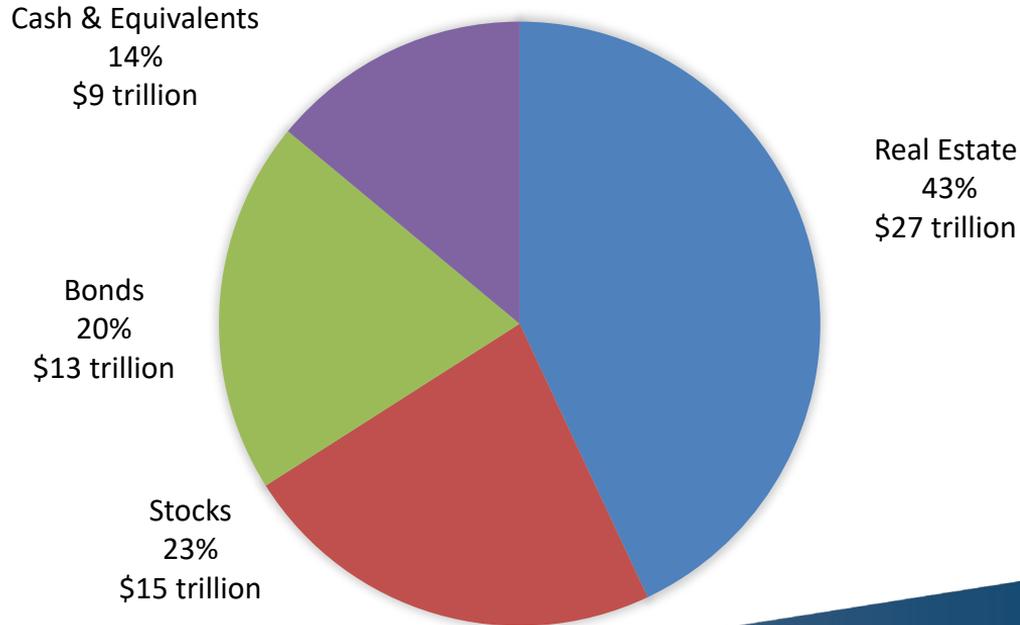


## What Is Closely Held Stock?

- Closely held stock (CHS) is often held by only a few family members or business associates who have no interest in selling the stock to the general public and who wish to keep control of the company with the key stakeholders.
- Whether it is done in anticipation of sale, redemption of stock or for some other reason, incorporating a charitable component in the transfer of CHS provides benefits to the business owner similar to those associated with gifting appreciated, publicly traded securities.
- Donating CHS to charity frees up capital in a tax-advantaged way, providing a charitable tax deduction and allowing the business owner to avoid capital gains taxes on the substantial appreciation of the company's stock. To receive an income tax deduction, the IRS requires donors to obtain an Appraisal Summary if the stock has a FMV between \$5,000 and \$10,000 and a Qualified Appraisal if the stock's FMV exceeds \$10,000
- *In order to avoid capital gains taxes, the donor must not have entered into a legally binding agreement for the sale prior to making the charitable gift* (discussions in anticipation of a sale are ok, as is the signing of a letter of intent)
- Often the stock is subject to buy/sell restrictions that require the donor to first seek amendment of any terms of the shareholder agreement that restrict stock transfer to any non-shareholders.
- CHS is transferred to charity by issuing a stock certificate in charity's name. Upon receiving the stock, charity can sell it (1) back to the corporation, (2) the employees through an employee stock ownership plan (ESOP), (3) the heirs, (4) other shareholders, or a combination of all four, transferring control while minimizing otherwise significant tax consequences for the donor.
- While charity cannot be legally bound to sell the shares, the goal is to convert the stock into cash. Without a public market for the stock, the available buyers are typically limited to the four mentioned above. Value is determined by qualified appraisal based on a number of factors.

## What Real Estate Wealth Looks Like Today

### CAPITAL WEALTH IN THE US



## Opportunity: Real Estate as a Prime Asset Class

- Charitable donations nationwide in 2018 - \$427.7 billion
- Real estate contributions estimated at 3% of this total (roughly \$12.8 billion); average gift exceeding \$500,000
- Single largest asset category for US households - almost 50% of all individual wealth in US
- Second most common non-cash gift behind appreciated stock
- Aging baby boomers are making plans: simplifying, retirement, taxes, legacies
- Corporations holding \$170+ billion in unused / underused real estate
- Market values trending up
- Offers the most opportunity as an untapped resource for gift planning

### Advantages for Donors:

- Meets philanthropic goals/creates legacy and allows for gifts otherwise unimaginable
- Creates a charitable tax deduction – 30% AGI with 5-yr carry-forward
- Avoids or reduces capital gains
- Saves possible estate taxes
- Provides relief from management and sale of property
- Creates an income stream (CGA, CRT, Bargain Sale)
- Allows donor to stay in home (Retained Life Estate)



## Important Documents Needed by Your Family:

- Funeral instructions and prepaid funeral instructions
- Last will and testament
- Revocable/living trust agreements
- Pre and postnuptial agreements
- VA file number, military discharge papers
- Birth and death certificates
- Marriage license or divorce decree
- Medicare card/health insurance card
- Bank statements, checkbooks, check registers, certificates of deposits
- Safe deposit rental agreement and keys
- Deeds, mortgages, leases, homeowner's insurance information
- Stock and bond certificates and account statements
- Pension, IRA, retirement account statements/current employee benefit information
- Life insurance policies or statements
- Last several years' income tax returns
- Documentation regarding any debts, such as car loans or credit cards
- Usernames and passwords to computer information, online and social media accounts

## Recommended Resources and Reading

- Financial and Legal Advisors
- Five year “check ups”- Needs change from Younger Set to Older Set
- Legacy Letter as part of Estate Documents
- Lifetime Transfers of Family Business Interests: <https://www.natlawreview.com/article/lifetime-transfers-family-business-interests-estate-tax-planning-opportunity>
- Resource for Special Needs Planning: <https://www.specialneedsalliance.org/special-needs-101/>
- Article discussing sharing your estate plans with family: <https://elder-law.com/should-you-share-your-estate-plan-with-your-family/>
- Article discussing how to avoid a head-ache for your heirs: <https://www.wsj.com/articles/create-an-estate-plan-so-your-kids-dont-inherit-a-headache-11582812341>
- To sign up for Marquette’s Planned Giving e-brochures and newsletters, please visit our website at the following link: <https://marquette.giftplans.org/>
- <https://www.forbes.com/sites/stevenbertoni/2020/09/15/exclusive-the-billionaire-who-wanted-to-die-brokeis-now-officially-broke/#126abbd53a2a>

# Questions

## Thank you for joining us today!

Please feel free to contact us with any additional questions, comments or concerns:

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