

Philanthropic Giving

By John A. Warnick

The Purposeful Charitable Trust or Foundation

Client Memory Loss and Charitable Remainder Trusts

I wonder how many of you have had a similar experience to the one I experienced about 10 years ago. A client called who I really didn't know very well. Another partner in my firm had helped him create a charitable remainder trust (CRT) in connection with a liquidity event at the company he had helped found. He had just left a meeting with his CPAs and was distressed to learn that the CRT had not saved him any taxes that previous year. In fact, now it was generating taxable income. So the client summed up the purpose of his call to me in these words: "Since we have harvested all of the income tax benefit we are going to get out of that trust, it's time to dismantle it and move on to something that will be more effective going forward."

I have often reflected on those words and wondered how it was possible that such an intelligent individual could have missed the point of the CRT? Was it possible that the only purpose he saw in the creation of the CRT was the tax savings it generated?

The anger and frustration he expressed when I explained to him that the CRT couldn't come back to him in a lump sum now that its "tax benefits" had been realized were real. He had forgotten all of the details around the form and substance of this technique.

In that experience the seed was planted which has grown into the ideas I want to share with you in this article. The ideas will be revolutionary, but there are much more powerful voices than mine which support these concepts. Hopefully, you will allow these thoughts to germinate in your practice and use the examples I will give as the "first shadow" of what exciting possibilities lie ahead as you strive to assist clients to achieve their charitable and legacy objectives.



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The Vision and Purpose of a Charitable Remainder Trust

When we are beginning to formulate a plan which includes a charitable remainder trust I believe one of the greatest untapped opportunities for us as advisors is to ask the client to focus on the “nontax” objectives they hope to accomplish with the charitable gift which will be made following their death.

In my experience with CRTs in a post-mortem setting there is often a “memorial” service of sorts if the gift is large enough. The family members, or at least a few of them, show up at the charity or some other appropriate spot and some token of appreciation which has been thoughtfully created or purchased by the Planned Giving Professional is presented to a family representative. And then most often the proceeds from liquidation of the CRT are deposited into the charity’s investment pool where they will be considered unrestricted funds.

I have a much different vision of what is possible if the client, like Ebenezer Scrooge, can look back to look forward. You would think that someone who had been up all night with visitations from his deceased business partner and three ethereal ghosts would wake up exhausted or at least “ghost hung-over.” Instead, Scrooge throws open the shutters exulting that he is alive and immediately commences to change the course of his life.

I am not suggesting that if you use a “visioning” process with your clients that they will all experience life-changing mindshifts. However, you will discover it does move the planning process from the “how” and “how much” of tax avoidance and minimization to the deeper “why” behind the CRT. Hopefully, the first opportunity you have to try this experiment won’t—as so often happens—come at year end when the dark shadow of the last business day of the year is hovering over you and the client and the financial planner who has recommended the CRT starts the conversation with this question: “How quickly can you get the document drafted?”

Here is a sample question I use in the first meeting we have where we are really getting serious about the creation of the CRT:

Imagine for a moment that you could experience a “Heaven Can Wait” opportunity like Warren Beatty did in that movie and you get to come back after your death to accomplish some unfinished business. And pretend that the unfinished business is the realization of the full potential of the Char-

itable Remainder Trust. Let’s say, using the numbers we are talking about today, that there is a million dollars that goes to the charity or charities of your choice upon your death. What is the positive difference that sum of money might make? If you were able to see like Warren Beatty did five or ten years after your death what good had come from your gift, what are the things which would excite you to observe happening as a result of your gift?

I would suggest that you ask for the clients’ permission to use a digital recorder to record what they “see” as they participate in this visioning process. Don’t interrupt the moment with the attempt to take notes. Listen attentively and focus on them. Give them the comfortable space of silence. And resist forming your next question as you listen to them. None of these steps come naturally for me. I have had to practice them and I continue to remind myself of the importance of each of those steps.

After the client finishes let there be as big a pause as there was in the early moments when you wondered the first time if they would ever go anyplace with this exercise. After you have done this once you will know to support the moment with your positive mental energy and the expectation that you are witnessing the birth of purpose and meaning.

You might then ask, “Is there anything else you would hope might happen as a result of your gift?”

Don’t assume that silence means “no.” Allow the client to continue to probe their heart and mind for the vision of other possibilities. I have witnessed a visioning exercise where the listener used one form or another of that “anything else” question at least five times and each time the thinking that was reflected in the client’s answer was almost as powerful, if not more powerful, than the preceding expressions.

If it feels appropriate, before I ask that “is there anything else” question I may offer a heart-felt affirming statement. You might be surprised at how that positive emotional energy enriches the client’s thinking. Here are some examples of how you might consciously affirm what you have heard the client express in their heart-felt words: “Wow, that is really a powerful vision.”

Or if you aren’t inclined to be so positive here is a more sedate affirming statement: “The vision you describe could really make a difference.”

Before I go to the second step of the visioning exercise I will try to capture, in the client’s own words to the best of my ability the essence of what I’ve heard. Here is an example of what that might sound like if you affirm and

summarize your client's vision by using their own words and expressions to frame your summary:

I believe I heard you express the hope that your gift might lead to a breakthrough in cancer research. You would be excited to know that somebody's mother survived the cancer that took your mother's life. It would make you feel so good to see that someone who survived cancer because of the research your gift supported could go on for twenty or thirty years making a difference in the lives of the children they teach at school, or among their own family.

Depending on how the first part of the visioning exercise has gone, I sometimes take the client to a second visioning question:

Please imagine for another moment that you are in this "Heaven Can Wait" experience. As you are observing all of the things which have happened as a result of your gift, what are some of the things which might take place which would greatly disappoint you or which you wish you could have somehow prevented?

After you have listened attentively, you may want to consider a follow-on question such as:

Is there anything else you can think of that we might have said or done which would either avoid that negative outcome or greatly minimize the risk it might happen as a result of your gift?

I find that clients have a much more difficult time with this question. So I am often prepared to offer what Scott Farnsworth calls a "Hidden Waterfall" story at this point, if it appears appropriate. Here is one such Hidden Waterfall story:

I am aware of a very difficult experience another family had over a sizable charitable gift. The first problem was that the parents had never told them about the gift. I'm not sure why. But in any event it came as a total shock. One of the children confided in their trusted advisor, "I just wish my parents would have told me the "why" behind this gift. I can't help but feel that they didn't trust me. Or they thought I would blow the money rather than making sure it would accomplish something great. It would have felt totally different if I would have been in on this gift. Perhaps I could have

even played some role in helping to make sure my parents' wishes were carried out. Now I don't even know what they really wanted other than to give a whole bunch of money to XYZ.

After I share that story, or something similar, I will ask: "Do you see a way those parents might have avoided that problem?"

And then I may go on to ask: "Is there anything you can think of that you might do to avoid having your children feeling disconnected from this gift or being afflicted with doubts over whether you trusted them?"

Depending on the dynamics of the family situation, you may need to judiciously shape that question to gently steer the client towards the most positive outcome possible. If it becomes apparent that there is a serious challenge within the family system, give strong consideration to bringing in a specialist who could either counsel with you and your client or assist them in implementing some intra-family communication and preparation that might avoid the result in the Hidden Waterfall story above.

What can result from such a visioning exercise? Here is an example of a purpose clause from a CRT:

The Purpose of the Lucy Bennett Charitable Remainder Trust

I lost my mother, Lucy Bennett, to cancer when I was 15-years old. I have chosen to name this trust the Lucy Bennett Charitable Remainder Trust to honor her and as a gift back to her for the encouragement she gave me that I could do anything I wanted to do in life if I would just get an education and work hard.

The heartache I felt at the time of my mother's death has never fully diminished. Whenever, I see a friend or colleague succumb to cancer it brings back a measure of that heartache and reaffirms my commitment to assist in finding a cure for this killer. It has been my lifelong fear that one of my children or I might be stricken with cancer because of a genetic predisposition. So in a very real way I'm making a gift through this trust to my family—for my children and their children and grandchildren who I may never know—in that I hope that the research which will be sponsored by the Lucy Bennett Charitable Remainder Trust will find a cure for any form of cancer which might attack them.

I have sought during my life to stay abreast of the breakthroughs in cancer research but I have never been able to spend quite as much time being strategic about my annual donations for cancer research and treatment as I would have liked. Because of the good fortune of the success of my business and the power of life insurance I've been able to create a much larger charitable gift and also insure that my objectives for providing significant opportunities for my family are realized. While my children, and eventually their descendants, won't directly benefit from the Lucy Bennett Charitable Remainder Trust I hope they will choose to actively participate as trustees of the Lucy Bennett Foundation which will receive the proceeds that remain in this trust upon my death.

I envision that through the Foundation my children, and perhaps eventually their descendants, will experience the joy of knowing that the grants they make will make a difference in the race to find a cure for cancer. If another serious illness might affect me, one of my children, or any of my descendants, I will want the Foundation to have the flexibility to direct distributions towards research or treatment of that disease. I know that is the way my mother would have wanted us to proceed. She always put my best interests in front of her own, even to the point of coming to my music recital the week she died even though she was in tremendous pain and greatly weakened.

The Paying It Forward Moment

As this visioning exercise draws to a close, or at the end of the client conference if we are going to discuss other concepts or points before closing, I like to end with what I call the "paying it forward" moment. I begin that moment in words like these:

As I listened to you express all of the positive impact your charitable gift might have, there was one vision that popped into my mind that I'd like to share with you and let you savor for a moment. I imagined one of those cancer survivors who was so touched by the gift of

life and the care she received that she asked her doctor, "What can I do to pay back this marvelous gift I have received." And her doctor might say, "You can do what so many others have done. You can contribute to cancer research." And then that individual might spend many years writing annual checks for cancer research or perhaps even some day in some attorney's office create a charitable remainder trust to support cancer research. Wouldn't it be wonderful if your gift could result in a never ending chain of others paying it forward?

That introduction to the "paying it forward" moment needs, of course, to be tailored to what you have heard your client express. In this example, I have chosen to follow on the situation we described above.

The "paying it forward" moment is much more than just the expression of that dream that this CRT might result in a marvelous fusion of charitable action. I'd encourage you to think about purchasing a copy of the movie *Pay It Forward* and watch it if you haven't already done so. Even if you have seen that amazing film, take the time to watch it again and be looking for this moment in that film, when Haley Joel Osment playing the role of 12-year-old Trevor McKenney says: "I guess it's hard for people who are so used to things the way they are—even if they're bad—to change. 'Cause they kind of give up. And when they do, everybody kind of loses."

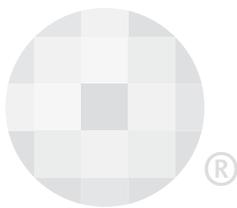
I have written that line down on a 3 x 5 card. When we finish this visioning exercise I like to give my client a copy of *Pay It Forward* with that quote. And then I would say something like this: "If you haven't watched this movie, please watch it and look for the moment when the boy makes this statement. If you own this already, please think of someone and find an appropriate moment when you might share this movie with someone else who could make a difference in the world. I'm just so privileged to have clients like you who haven't given up. And because of clients like you I know that eventually the world will be a better place."

If you and your client don't share that "paying it forward" moment as you are in the heart of helping them create their charitable remainder trust you have missed a tremendous opportunity. It's my hope that you will feel the power behind searching for the

deeper meaning and purpose that should be a part of every charitable remainder trust, charitable lead trust, donor advised fund, or family foundation, and that you will experience the joy of moments when

clients get truly energized about their planning and express their appreciation to you for the wisdom and guidance you have offered in their pursuit of their estate planning goals.

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