COMMUNITY FOUNDATIONS FOR ESTATE PLANNERS

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I. Introduction. In 2007, total charitable giving in the United States exceeded $300 billion for the first time. While the media always focuses on the megagifts, donations from individuals comprise 88% of the total combination of all bequest, family foundation, and individual giving. About half of all individual giving is done by households with incomes under $100,000. Almost 10% of the American workforce is employed in the non-profit sector.

Clients from all walks of life and of all economic strata make contributions to their churches, universities, kids' PTAs and sports associations, and all sorts of arts and human services organizations. With some discussion, bequests to those same organizations often are made in our clients' wills. Charitable planning is clearly not only for our wealthy clients or the exceptional individuals who capture media attention because they never made much money, lived very modestly and left their entire estates to charity.

Community foundations are among the nation's best kept philanthropic secrets. Since the first community foundation was created in Cleveland in 1914, the amount of philanthropy community foundations have generated and facilitated is enormous. There are over 700 community foundations in the United States, eleven of which have assets of $1.0 billion or more. In 2008, seven community foundations granted over $100 million each. There are nearly 700 community foundations outside the United States. In Alaska, one community foundation provides services to the state as a whole (the Alaska Community Foundation, www.alaskacf.org), and has affiliates in communities throughout the state. In addition, several community foundations exist to cover more limited areas of the state.

Wikipedia defines community foundations as "instruments of civil society designed to pool donations into a coordinated investment and grant making facility dedicated primarily to social improvement of a given place." They have been described as "democratizing" philanthropy by making charitable giving easy and inexpensive for the average person.

The focus is of this presentation is on how estate planners can most easily use community foundations. The forms attached as exhibits are offered to illustrate the solutions community foundations offer us all. Every planning situation is different, of course, and different community foundations approach issues differently. However, these forms have been successfully used by the authors and they are presented as examples only.

II. Taxation. If properly structured, community foundations are taxed as public charities and donors receive a federal income tax deduction, federal estate tax deduction, and federal gift tax deduction for their contributions.

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a. *Community Foundations are Taxed as Public Charities.*

i. If a community foundation satisfies the "public support test" by attracting contributions from a diverse group of donors, it will be classified as a public charity under I.R.C. §501 (c)(3) and thereby has significant advantages over a private foundation. §l70(b)(1)(A)(vi).

b. *Federal Income Tax Deduction.*

i. Individual donors receive a charitable income tax deduction for contributions to a Community Foundation.

1. §170(b)(1)(A)(vi) states that individuals receive an income tax deduction for any charitable contribution to an organization referred to in §170(c)(2) which normally receives a substantial part of its support from a governmental unit or from direct or indirect contributions from the general public. §170(c)(2) refers to community foundations.

2. Cash and non-appreciated property: The deduction shall be allowed to the extent that the aggregate of the contributions does not exceed 50% of the taxpayer's contribution base for the taxable year. §170(b)(1)(A).

3. Appreciated Property: The maximum deduction allowable for contributions of capital gain property is an amount equal to the lesser of:

a. 30% of the taxpayer's contribution base; or

b. the amount of the taxpayer's 50% limitation remaining after the taxpayer's contributions to public charities are considered. §170(b)(1)(C).

ii. The deduction by a corporation in any taxable year for charitable contributions, as defined in §170(c), is limited to 5% of its taxable income for the year computed without regard to:

1. The deduction for charitable contributions,

2. The special deductions for corporations allowed under part VII, subchapter B, chapter 1 of the Code,

3. Any net operating loss carryback to the taxable year under §172,

4. The special deduction for Western Hemisphere Trade Corporations under §922, and

5. Any capital loss carryback to the taxable year under §1212(a)(1).

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A contribution by a corporation to a trust, chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals is deductible only if the contribution is to be used in the United States or its possessions for those purposes. §170(c)(2).

iii. If the community foundation does not qualify as a public charity (but is treated for federal income tax purposes as a private foundation) the donor's federal income tax deduction is limited to the deductions allowed to a private foundation.

c. *Federal Estate Tax Deduction*.

i. The value of property transferred at decedent's death to a community foundation is 100% deductible in determining the amount of federal estate tax. I.R.C. §2055(c).

d. *Gift Tax Deduction*.

i. The Donor receives a 100% gift tax charitable deduction for the value of the assets donated during life to a community foundation. I.R.C. 2522(a).

III. Requirements for a community foundation to be treated as a single entity, rather than as an aggregation of separate funds: Treas. Reg. 1.170A-9(f)(11). In order for donors to receive an income tax deduction, the community foundation must qualify as a single entity by adhering to the requirements below.

a. *Name*: The organization must be commonly known as a community trust, fund or foundation in the community or area it serves. The name may also convey the concept of a capital or endowment fund to support charitable activities in the community or area it serves. Treas. Reg. §1.170A9(f)(11)(iii).

i. "Alaska Community Foundation"

ii. "Bethel Community Services Foundation"

iii. "Anytown Legacy Fund"

iv. "Somewhere Area Endowment"

b. *Common Instrument:* The community foundation must be subject to a common governing instrument or a master trust or agency agreement ("governing instrument"). Treas. Reg. §1.170A9(f)(11)(iv).

i. May be embodied in a single document or several documents containing common language.

ii. The language may be included in an instrument of transfer to the community foundation making the fund subject to the community foundation's governing instrument.

iii. A community foundation may adopt a new governing instrument with new provisions to apply to future transfers without violating this section.

c. *Common Governing Body*: The community foundation must have a common governing body or distribution committee ("governing body") which either directs or monitors the distribution of all of the funds exclusively for charitable purposes (within the meaning of §170(c)(1) or (2)(b)). Treas. Reg. §1.170A-9(f)(1l)(v).

i. For Example, "Board of Directors" at the Alaska Community Foundation.

ii. The governing body must, to the extent possible under state law, have the power to modify any restriction on the distribution of the funds it deems to be unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community, and to replace any trustee, custodian, or agent for breach of its fiduciary duty or for failure to obtain a reasonable rate of return. Treas. Reg. §1.170A-9(f)(1l)(v)(B).

iii. The governing body must commit itself, by resolution or otherwise, to exercise its powers in the best interests of the community trust, and must ultimately do so. Treas. Reg. §l.l70A-9(f)(1l)(v)(E).

iv. The governing body must also commit itself, by resolution or otherwise, to obtain information and take steps to ensure that a reasonable rate of return is realized on the assets of each of its component funds with due regard to conserving the principal of the funds and in furtherance of the exempt purposes of the trust. Treas. Reg. §l.l70A-9(f)(1l)(v)(F).

d. *Common Reports*: The community foundation must prepare periodic financial reports treating all of the funds which are held by the community trust, either directly or indirectly or in component parts, as funds of the organization. Treas. Reg. 1.170A-9(f)(11)(vi).

IV. **Component Funds**. Many donors will create funds at community foundations, as opposed to simply donating to the community foundation itself. In order to qualify for the applicable deductions, it is important that the fund meet the following two requirements.[1]

a. *Creation*: The fund must be created by a gift, bequest, legacy, or other transfer to a community foundation which is treated as a single entity under Section §170A-9(f)(l1)(ii)(A).

[1] Treas. Reg. l.l70A-9(f)(ii).

b. *Material Restrictions*: The fund may not be subject to any material restrictions or conditions with respect to the transferred assets. §170A-9(f)(1l)(ii)(B).

i. Definition: A material restriction is a condition that prevents a community foundation "from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes." Treas. Reg. 1.507-2(a)(8)(i). Whether or not a particular condition or restriction imposed upon a transfer of assets is *material* (within the meaning of paragraph (a)(8) of this section) must be determined from all of the facts and circumstances of the transfer. *Id*.

ii. Significant facts and circumstances include:

1. Whether the public charity (including a participating trustee, custodian, or agent in the case of a community trust) is the owner in fee of the assets it receives;

2. Whether such assets are to be held and administered by the public charity in a manner consistent with one or more of its exempt purposes;

3. Whether the governing body of the public charity has the ultimate authority and control over such assets, and the income derived therefrom; and

4. Whether, and to what extent, the governing body of the public charity is organized and operated so as to be independent from the transferor.

iii. Factors not adversely affecting determination: Treas. Reg. 1.507-2(a)(8)(iii).

1. *Name*. The fund is given a name or other designation which is the same as or similar to that of the transferor private foundation or otherwise memorializes the creator of the foundation or the creator's family.

2. *Purpose. The income and assets of the fund are to be used for a designated purpose or for one or more particular section 509(a) (1), (2), or (3) organizations, and this use is consistent with the charitable, educational, or other basis for the exempt status of the public charity under section 501(c)(3).*

3. *Administration. The transferred assets are administered in an identifiable or separate fund and the community foundation is the legal and equitable owner of the fund and the governing body exercises ultimate and direct authority and control over the fund; e.g. a fund to endow a chair at a university or a medical research fund at a hospital.*

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4. *Restrictions on disposition.*

a. The transferor private foundation transfers property and requires the community foundation to continue to hold the property if this retention is important to the achievement of charitable or other similar purposes in the community because of the peculiar features of the property.

b. E.g. a private foundation transfers a woodland preserve which is to be maintained by the community foundation as an arboretum for the benefit of the community. This restriction does not include a restriction on the disposition of an investment asset or the distribution of income.

iv. Adverse factors. The presence of any of the following factors will be considered as preventing the *transferee from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes*: Treas. Reg. 1.507(a)(8)(iv).

1. *Distributions.* If the transferor reserves the right, directly or indirectly, to name the persons to which the community foundation must distribute, or to direct the timing of the distributions as, for example, by a power of appointment.

2. *Other action or withholding of action.* The terms of the transfer agreement, or any expressed or implied understanding, require the community foundation to take or withhold action with respect to the transferred assets which is not designed to further one or more of the exempt purposes of the community foundation, and such action or withholding of action would, if performed by the transferor private foundation with respect to such assets, have subjected the transferor to tax under chapter 42 (other than with respect to the minimum investment return requirement of section 4942(e)).

3. *Assumption of leases, etc.* The community foundation assumes leases, contractual obligations, or liabilities of the transferor private foundation, or takes the assets thereof subject to these liabilities (including obligations under commitments or pledges to donees of the transferor private foundation) for purposes inconsistent with the purposes or best interests of the public charity, other than the payment of the transferor's chapter 42 taxes incurred prior to the transfer to the public charity to the extent of the value of the assets transferred.

4. *Retention of investment assets.* The transferee community foundation is required by any restriction or agreement (other than a restriction or agreement imposed or required by law or regulatory authority), express or implied, to retain any securities or other investment assets transferred to it by the private foundation. In a case where such transferred assets consistently produce a low annual return of income, the Internal Revenue Service will examine carefully whether the transferee is required by any such restriction or agreement to retain such assets.

5. *Right of first refusal.* An agreement is entered into in connection with the transfer of securities or other property which grants directly or indirectly to the transferor private foundation or any disqualified person with respect thereto a right of first refusal with respect to the transferred securities or other property when and if disposed of by the public charity, unless such securities or other property was acquired by the transferor private foundation subject to such right of first refusal prior to October 9, 1969.

6. *Relationships.* An agreement is entered into between the transferor private foundation and the transferee public charity which establishes irrevocable relationships with respect to the maintenance or management of assets transferred to the public charity, such as continuing relationships with banks, brokerage firms, investment counselors, or other advisors with regard to the investments or other property transferred to the public charity (other than a relationship with a trustee, custodian, or agent for a community trust acting as such). The transfer of property to a public charity subject to contractual obligations which were established prior to November 11, 1976, between the transferor private foundation and persons other than disqualified persons with respect to such foundation will not be treated as prohibited under the preceding sentence, but only if such contractual obligations were not entered into pursuant to a plan to terminate the private foundation status of the transferor under section 507(b)(l)(A) and if the continuation of such contractual obligations is in the best interests of the public charity.

7. *Other conditions.* Any other condition is imposed on action by the public charity which prevents it from exercising ultimate control over the assets received from the transferor private foundation for purposes consistent with its exempt purposes.

c. *Failure to meet the above two tests* (creation and material restrictions} results in a contribution to a "noncomponent fund", i.e. a separate trust, not-for-profit corporation or association that is generally treated as a separate private foundation. Treas. Reg. §1.170A-9(f)(l4)(i).

V. Donor-Advised Funds.

a. *Background*: The majority of clients choose to set up donor-advised funds to accomplish their philanthropic goals. A donor-advised fund offers the opportunity to create a low-cost, flexible vehicle for charitable giving that places almost no administrative burdens on the donor while allowing them to retain input regarding the grantees from the fund.

A donor-advised fund can function similarly to a private foundation. The fund agreement serves the same purpose as a Certificate of Formation for a private foundation. The Advisory Committee can adopt bylaws as the governing rules for its operation, including setting out meeting requirements, advisory committee members, number of committee members, and even subcommittees. As one client who created a donor-advised fund instead of a private foundation remarked, "My family wants to do the fun part of this—the grant-making—and not the work part dealing with lawyers, CPAs, and investment people."

The 2006 Pension Protection Act introduced the terms "donor-advised fund" and "sponsoring organization" and enacted or amended various excise taxes designed to penalize improper acts of donor-advised funds and their sponsoring organizations, donors, and advisors.

i. *Taxes imposed*:

1. §4966: tax on improper distributions made by sponsoring organizations

2. §4958: excess benefit transactions

3. §4967: taxes imposed on donors and others whose advice to a donor-advised fund results in an improper benefit

4. §4943: taxes imposed on excess business holdings

ii. *Definition of sponsoring organization:*

1. Any organization that:

a. is described in §170(c) as a permissible donee (other than in §170(c)(l) and without regard to §170(c)(2)(A);

b. is not a private foundation (as defined in §509(a); and

c. maintains one or more donor-advised funds.

2. Therefore, for the purpose of this discussion, a community foundation, if properly structured, is a sponsoring organization.

iii. *Definition of Donor-advised Fund*: All three prongs of the three-prong definition below must be satisfied in order for a fund to be treated as a donor-advised fund. §4966(d)(2)(A). A donor-advised fund is a fund or account:

1. Separately identified by reference to contributions of a donor or donors. For purposes of this first prong, funds may be separately identified by: [2]

   a. naming the fund after a donor; or

   b. treating a fund on the books of the sponsoring organization as attributable to funds contributed by a specific donor or donors.

2. Owned and controlled by a community foundation; and if for some reason a fund is owned or controlled by a donor, there is no completed gift for purposes of §170.[3]

3. Advisory privileges: with respect to which a donor, or the donor's designee has, or reasonably expects to have, advisory privileges regarding the distribution or investment of any amounts held in the fund.

   a. The term "advisory privileges" is not defined in §4966 or elsewhere in the Code. According to the Technical Explanation, advisory privileges are distinguished from legal rights or obligations. For example, if a donor's contribution to a sponsoring organization is subject to specific, enforceable rights with respect to the gift, the donor is not treated as having advisory privileges.[4]

   b. A donor's advisory privileges must arise by virtue of the donor's status as a donor. This is an important limitation because a donor to a sponsoring organization may also be an officer, employee, director, or trustee of the sponsoring organization.

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[2] BNA-Taxes Associated with Donor Advised Funds: Staff of J. Comm. On Tax'n, 109th Cong., "Technical Explanation of H.R. 4, the 'Pension Protection Act of 2006'" 342-43 (J. Comm. Print 2006).
[3] Id. at 343.
4 Id. at 343-345.

i. According to the Technical Explanation, if a donor is also a trustee of the sponsoring organization, the donor may provide advice in the donor's capacity as trustee with respect to the distribution or investment of a fund to which the donor contributed without possessing advisory privileges in the donor's capacity as a donor.[5]

ii. In contrast, if a donor, by reason of a contribution to a fund, secures an appointment on a committee of the sponsoring organization that advises how to distribute or invest the fund, the donor may have a reasonable expectation of advisory privileges, even though the donor is also an employee, officer, or director of the sponsoring organization.[6]

iv. *Exceptions to Treatment as a Donor-advised Fund under* §4966: The PPA enacted or amended various excise taxes designed to penalize improper acts of donor-advised funds and their supporting organizations, donors, and advisors. Therefore, exception from treatment as a donor-advised fund may have favorable tax consequences. A Donor-advised Fund does not include a fund or account: §4966(d)(2)(B).

1. that makes distributions only to a single identified organization or governmental entity, or

2. with respect to which a donor or designee advises as to which individuals receive grants for travel, study or other similar purposes if:

a. the donor's advisory privileges are performed exclusively by such donor in his capacity as a member of a committee appointed by the sponsoring organization,

b. no combination of a donor and persons related to or appointed by such donor control such committee, and

c. all grants from such fund or account are awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the board of directors of the sponsoring organization and such procedure is designed to satisfy the requirements applicable to private foundations under Section 4945(g) with respect to grants

[5] Id.
[6] Id.

made for travel, study or similar purposes. §4966(d)(2)(B). The requirements applicable to probate foundations are listed below: I.R.C. §4945(g).

i. The grant constitutes a scholarship or fellowship grant that would be subject to the provisions of §177(a) and is to be used for study at an educational organization described in §170(b)(1)(A)(ii).

ii. The grant constitutes a prize or award that is subject to the provisions of §74(b) (without regard to §74(b)(3)), if the recipient of the prize or award is selected from the general public; or

iii. The purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance the literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

3. Additional Exceptions Authorized: In addition to the two exceptions described above, other funds or accounts that do not qualify for one of the exceptions may be exempted from treatment as a donor-advised fund by the Secretary if: §4966(d)(2)(C).

a. the fund or account is advised by a committee not directly or indirectly controlled by the donor or any person appointed or designated by the donor for the purpose of advising with respect to distributions from: such fund (and any related parties); or

b. the fund benefits a single, identifiable charitable purpose.

v. *Definition of Fund Manager*: The term 'fund manager' means, with respect to any sponsoring organization: §4966(d)(3)

1. An officer, director, or trustee of such sponsoring organization (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the sponsoring organization), and

2. with respect to any act (or failure to act), the employees of the sponsoring organization having authority or responsibility with respect to such act (or failure to act).

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b. *Taxable Distributions-Section 4966*:

i. *Background*: The 2006 PPA enacted §4966, which imposes taxes on certain distributions by donor-advised funds. Section 4966 is effective for taxable years beginning after August 17, 2006. P.L. 109-280, Title XII. §1231

ii. *Definition*: The term "taxable distribution" means any distribution from a donor-advised fund: §4966(c)(1)

1. to any natural person, or

2. to any other person if:

a. Such distribution is for any purpose other than one specified in section 170(c)(2)(B) (religious, scientific, literary, educational, or other charitable purpose), or

b. the sponsoring organization does not exercise *expenditure responsibility* with respect to such distribution in accordance with Section 4945(h). The expenditure responsibility referred to is carried over from the rules that apply to private foundations. Expenditure responsibility in this context means that the sponsoring organization is responsible to exert all reasonable efforts and to establish adequate procedures to:

i. see that the grant is spent solely for the purpose for which made,

ii. obtain full and complete reports from the grantee on how the funds are spent, and

iii. make full and detailed reports with respect to such expenditures to the Secretary.

iii. *Exceptions*: A distribution to any of the following organizations is exempted from the scope of the term "taxable distribution": §4966(d)(2)(C).

1. any distribution from a donor-advised fund to any organization described in Section 170(b)(1)(A)(other than a disqualified supporting organization)

c. Organizations described in Section 170(b)(1)(A): Includes churches; certain educational organizations; organizations which provide medical care, hospital care, medical education, or medical research; organizations

which receive government funds for the benefit of universities or colleges; a state, possession or political subdivision of the United States; a corporation, trust, community chest, or foundation; a private foundation (see §170(b)(1)(A) for complete list).

d. Disqualified supporting organization: See §4966(d)(4) for definition.

2. to the sponsoring organization of such donor-advised fund, or

3. to any other donor-advised fund.

iv. *Tax Imposed*:

1. Tax on Sponsoring Organization: 20% of the amount of a taxable distribution. §4966(a)(1).

2. Tax on Fund Management: §4966(a)(2).

a. 5% of the amount of a taxable distribution is imposed on the agreement of any fund manager who agreed to the making of the distribution, knowing that it is a taxable distribution.

b. If more than one fund manager is liable, the liable managers shall be jointly and severally liable. §4966(b)

The maximum amount of tax that can be imposed on the fund management for anyone taxable distribution is limited to $10,000.

v. *Abatement of Taxes*: the following two factors must be established to the satisfaction of the secretary in order to abate the taxes under Section 4966: §4962(a).

1. a taxable event was due to reasonable cause and not due to willful neglect; and

2. the taxable event was corrected within the correction period.

c. *Taxes on Prohibited Benefits*: IR.C. §4967. Taxes under this section are effective for taxable years beginning after August 17, 2006. Generally, this section imposes a tax on the persons described in §4958(f)(7) and fund managers who receive a more than incidental benefit as a result of a distribution based on their advice.

d. *Taxes on Excess Benefit Transactions*: Taxes on excess benefit transactions may be imposed on both donor-advised funds and sponsoring organizations. §4958.

e. *Taxes on Excess Business Holdings*: I.R.C. §4943. Section 4943 imposes taxes on the excess business holdings of a private foundation. In 2006, the Pension Protection Act extended the application of this section so that some of its terms apply to donor-advised funds.

f. *Treatment of Charitable Contribution Deductions to Donor-advised Funds*: Effective after February 13, 2007, contributions to Donor-advised Funds are deductible for income, gift and estate tax purposes unless the sponsoring organization is a 2555(a)(3)-(5) organization (i.e., war veterans organization, lodge or cemetery corporation), or a Type III supporting organization that is not functionally integrated. IRC §170(f), 2522(c)(5) and 2055(e)(5). The Donor must obtain a contemporaneous written acknowledgement from the sponsoring organization that the sponsoring organization has exclusive legal control over the assets contributed. *Id*.

VI. Practical Considerations: How Community Foundations can be Used

a. *Advantages of Donor-Advised Funds Over Private Foundations*.

Many clients desire to create a private foundation, but do not take into account the expenses and time involved with running a private foundation. Donor-Advised Funds ("DAF's") may provide significant advantages over private foundations.

- DAFs share the tax-exempt status of the community foundation and do not have to apply for separate tax-exempt status;
- Tax deduction of up to 50% of AGI while the private foundation tax deduction is limited to 30% of AGI;
- The fund assets are professionally invested through the community foundation, while still allowing the donor to make grant recommendations;
- Private foundation self-dealing rules do not apply;
- No required public disclosure of grants/anonymity available;
- No annual taxes; and
- The community foundation fulfills the associated fiduciary responsibilities while a private foundation board has full fiduciary responsibility.

b. *Endowments*.

The endowment represents the margin of excellence for any non-profit organization. It ensures the longevity of the organization and provides an extra source of income, outside of routine operating donations.

An endowment is a fund made up of gifts and bequests that are subject to a requirement that the principal be maintained intact and invested to create a source of income for an organization. The endowment requires that the principal remain intact in perpetuity, for a defined period of time, or until sufficient assets have been accumulated to achieve a designated purpose.

Some philanthropists wrestle with the lack of immediacy that accompanies an endowment. "I could be helping so many kids today if that money weren't sitting in the bank." "It would take 50 years of donations for the endowment to produce any meaningful income." On the other hand, modern philanthropy is about choice. Today we are faced with an array of donors who often have very different desires.

Painting with a broad brush, there are two main types of donors: (a) those who desire to witness the results of their donations today (for example, a donor who gives $x annually to support a specific child in India, or a donor who gives $x to fund the building of a local orphanage), and (b) those who wish to support the longevity and the excellence of an organization instead of current operations. An endowment serves the latter group and may increase an organization's donor base by attracting new types of donors.
The simplest way to create an endowment is through a fund at a community foundation. This can be accomplished either by an individual or an organization.

c. *How can Private Foundations Benefit from Community Foundations?*

i. *Postponement of distributions*. To avoid the Section 4942 excise tax, a private foundation must make sufficient "qualifying distributions" each year. A qualifying distribution is any amount paid to accomplish one or more purposes described in Section 170(c)(1) or Section 170(c)(2)(B).[7] However, a private foundation might wish to postpone distributing to specific groups for various reasons. One solution is for the private foundation to make its required distributions to a donor-advised fund at a community foundation. Distributions by private foundations to community foundations constitute "qualifying distributions" under Section l70(c)(2)(B). The private foundation satisfies its distribution requirement and retains the ability to ultimately have its grants reach its intended charities. Furthermore, the private foundation has successfully postponed making distributions to specific groups.

ii. *Maintaining privacy*. Information about distributions by private foundations is readily available. However, a private foundation may make anonymous grants through a donor-advised fund at a community foundation.

[7] §4942(g)(1)(A); Regs. §53.4942(a)-3(a)(2).

d. *Overseas Grant-making by a Private Foundation Through a DAF*.

An individual who owns a private foundation desired to contribute to his uncle's charitable society overseas. However, he did not want his private foundation to make the donation directly to the relative in fear of being the sole and eternal supporter of the overseas society. He therefore created a donor-advised fund at a community foundation in order to attract donors from the community who have an interest in giving to causes in this particular country.

Private foundations must follow specific rules when making grants to foreign charities. The Pension Protection Act requires that international grants from donor-advised funds comply with section 4945(h) of the private foundation rules. Section 4945(h) requires a private foundation to make reasonable efforts to ensure that a grant to a foreign charity is spent for its intended purposes, to obtain reporting from the grantee that shows how the funds were expended, and to provide reporting about the grant to the IRS. This process is called "expenditure responsibility." As an alternative to expenditure responsibility, a private foundation can make a good faith determination that the foreign organization is the equivalent of a U.S. public charity. This process is known as "equivalency determination." Different factors and circumstances will determine which option is most appropriate and efficient. Some community foundations and some private foundations use both out of an abundance of caution.

The additional steps that must be taken to assure that these rules for grant-making to foreign charities are complied with may mean that such grants incur additional administrative costs.

e. *Scholarship Funds*.

Many private foundations were originally created by donors who wished to recognize outstanding individual achievement through scholarships, grants or awards. However, since 1969, the Internal Revenue Service has imposed complicated requirements on private foundation grants to individuals. Community foundations are exempt from these requirements and allow donors to identify the type of individuals they wish to assist and the criteria to be used. The community foundation then makes the grants in accordance with the criteria. Donors may stay involved with the scholarship program through an advisory relationship or a committee to assist in announcing the program and selecting the recipients. The community foundation handles any necessary paperwork with academic institutions. This is a common function of community foundations and they often administer funds geographically remote from their offices.

f. *Field of Interest Fund*:

Field of Interest Funds allow donors to create a fund that targets a particular charitable interest, such as education, teen pregnancy, or a particular river or watershed. The community foundation then tailors grants from the fund to fit the chosen interest. For example, if a donor created a Field of Interest Fund to prevent drug abuse, the

community foundation would research and choose grant recipients with ties to the prevention of drug abuse and within any guidelines specified by the donor. The community foundation then monitors the results and makes changes in grantees accordingly. Field of Interest Funds are inherently flexible and can adapt to the changing needs of any community.

VII. Practical Considerations: Other Issues

a. *Fees*: Community Foundations charge administrative fees and other fees. These fees are generally nominal compared to the amount required if an individual fund had to recreate these services from scratch. However, fees can differ dramatically from community foundation to community foundation and for different services provided. The careful donor and careful estate planner should always get a clear understanding of fees charged by a particular community foundation before creating a fund there.

b. *Geography*: Community Foundations focus on the improvement and growth of the local community in which they are situated. With a relatively narrow focus, community foundations can monitor changing conditions and respond accordingly. Donors particularly benefit from this expertise when they create a Field of Interest Fund, because the community foundation has the knowledge and resources to make effective grants. If desired, many community foundations make grants around the state, the country, and the world.

c. *Perpetuity and Advisory Committees*. Estate planners should be aware that some community foundations limit the number of years or generations that a donor can specify the members of advisory committees. Most community foundations recognize that Donor-advised Funds are, in effect, the equivalent of family foundations to donors and permit donors to specify the makeup of advisory committees. Some community foundations limit the number of years a fund can exist.

Before creating a fund at a community foundation, a donor or estate planner should understand the foundation's policies about funds and advisory committees.

d. *Flexibility*: Community Foundations are inherently flexible and illustrate the fact that modern philanthropy is about choice. No two donors are identical and charitable planning is as unique for every donor as estate planning is to every client. An estate planner will find that most community foundations are very receptive to conversations about new types of projects or funds.

e. *Publicity*. One of the practical considerations for creating a fund at a community foundation that the general public might contribute to is the opportunity for publicity. Many community foundations have robust websites and email newsletters and many send out newsletters and annual reports. Each of those offers great opportunities for endowments, scholarship funds, field of interest funds, and special project funds to get publicity that they could not get otherwise, and the opportunity for contributions they would never receive otherwise.

f. *Other Considerations*. Many community foundations have user-friendly websites that facilitate donations by use of credit cards. The ability of a new fund to receive donations via a website is enormously helpful. The community foundation then handles the contributions and sends out the required donor acknowledgement letters.

Community foundations normally share the grant applications they get from charities with their respective Donor-advised Funds and with the community. That information is invaluable to donors in making their contributions and grants.

VIII. Conclusion

Community foundations offer a wide range of easy, low cost solutions to almost every charitable planning issue imaginable. With community foundations serving Alaska and the nation readily accessible to estate planners and their clients, estate planners should have a basic working knowledge of them for their wealthy and not-so-wealthy clients. While community foundations differ widely in terms of focus, fees, sophistication, and flexibility, they have the unparalleled ability to assist estate planners in helping their clients meet their planning goals.

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