

Leaving a legacy to charity

Including a gift to charity in a will is a great way to make a difference and there are also tax benefits.

Legacies are an important source of income for many charities and the voluntary sector received around £2billion in legacy income in 2011/12¹. However, this is only 5% of total income and the number of people who leave legacies to charity may be only 7%².

Solicitors and other will writers can play a role in changing this. A study carried out by the Cabinet Office Behavioural Insights Team, published in 2013, found that when will writers mentioned the possibility of a leaving a legacy to charity, the percentage who did this rose from 4.9% to 10.8%, and that this increased to 15.4% when people were asked if there are any causes they are passionate about³. This suggests that asking people at the right moment whether they want to leave a legacy is important and so is the way in which the question is asked.

Types of gift

A cash gift, or pecuniary legacy, is a straightforward option. But the effects of inflation could mean the ultimate value becomes less than intended. This problem can be dealt with by updating a will regularly, or linking the cash legacy with inflation.

Another possibility is a gift of individual possessions, known as a specific legacy. This might be property, shares or land or other things. It's worth providing for what happens if the possession is sold during the client's lifetime.

If a client would like a charity to benefit more significantly, an alternative option might be a residuary legacy. This involves giving a proportion of an estate to charity after expenses and any pecuniary and specific legacies have been paid.

Drafting the will

It's important that a charity is properly identified in the drafting of the legacy and its full name, address and registration number should be included. This information is available from the Charity Commission for charities in England and Wales, the Office of the Scottish Charity Regulator for Scottish charities and the Charity Commission for Northern Ireland for Northern Irish charities. Many charities have a section on their website with template wording for legacies.

A legacy can be given for specific activities of the charity, subject to an expression of wishes or binding obligations. The risk of including a binding obligation is that the legacy could fail if the charity isn't able to use the legacy for the purpose. A letter setting out the client's wishes

provides more flexibility and is often a better option. The trustees of the charity should take the wishes into account, but are not bound legally to follow them.

You should also consider what happens if the charity beneficiary ceases to exist. If this is the result of a 'relevant charity merger' under the Charities Act 2011, and the merger is entered in the Charity Commission's register of charity mergers, the legacy will usually take effect as a gift to the successor charity. However, a legacy may fail if the wording provides that the charity must be in existence at the date of the testator's death.

If a legacy intended for a charity fails, the property will become part of the deceased's residuary estate.

Tax benefits

There is no Inheritance Tax (IHT) on gifts under a will to charities or community amateur sports clubs (CASCs). Legacies to overseas charities are not exempt from IHT. But gifts to an organisation within the EU do now qualify, if the organisation would qualify for charitable status if it was based in the UK.

The value of a gift to a charity or CASC will be deducted from the estate before IHT is calculated. In some cases this may bring the total estate value below the taxable threshold, which is £325,000 for 2014/15.

Where an individual leaves more than 10% of his or her net taxable estate to charity, the estate will benefit from a 36% rate of IHT, which is a 10% reduction from the usual rate of 40%.

Charities are not liable to capital gains tax (CGT). If the executors sell assets a CGT liability may arise against the executors. This can be avoided by appropriating the assets to a beneficiary charity as the executors will then sell as bare trustees. If the asset is land it will be necessary to comply with provisions in the Charities Act 2011 concerning the disposal of charity land.

Final tip

It's a good idea to encourage clients to let a charity know that they should benefit from a legacy under a will, as this helps charities to plan ahead.

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Footnotes

- 1 The UK Civil Society Almanac 2014, NCVO (<http://data.ncvo.org.uk/a/almanac-14/how-much-does-the-voluntary-sector-receive-in-legacy-income-2>)
- 2 Remember a Charity 'Why Leave a Gift in Your Will' (<http://www.rememberacharity.org.uk/why-leave-a-gift>)
- 3 'Applying behavioural insights to charitable giving' (28 May 2013), Cabinet Office