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The Top Ten Charitable Planning Ideas for the Current Environment

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The Charitable Environment

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The Current Planning Environment

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- Investment market have fluctuated dramatically over the last decade and interest rates are at historic lows.
- We are in a low tax rate environment - but what is ahead of us?
- Congress and the IRS have leveled significant attention on charitable gift transactions and created new rules.
- The press has focused on the charitable industry’s cautionary tales.

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Investment Results Matter: 1999-2012 Major Markets

	DJIA	S & P 500	NASDAQ
1999	25.22%	19.53%	85.50%
2000	-6.18%	-10.14%	-29.29%
2001	-7.10%	-13.09%	-21.05%
2002	-16.76%	-23.37%	-31.53%
2003	25.32%	26.38%	50.01%
2004	3.15%	8.99%	8.59%
2005	-.61%	3.0%	1.37%
2006	16.29%	13.62%	9.52%
2007	6.4%	3.5%	9.8%
2008	-33.8%	-38.5%	-40.5%
2009	18.8%	23.5%	43.9%
2010	11.0%	12.8%	16.9%
2011	5.5%	0%	-1.8%

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Snapshots of Market Movement

All Time Highs	High	Date of High	December 2011	Change
Dow Jones	14,164.5	10/9/2007	12,217.56	-14%
S&P 500	1,565.15	10/9/2007	1,257.6	-20%
NASDAQ	5,048.62	3/10/2000	2,605.15	-48%

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The Madoff Chill

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- In addition to downturns in the securities markets and real estate markets, there are numerous instances of fraud
- Madoff Ponzi scheme topped the list –losses of more than $50 billion
- Losses were experienced not only by individuals and corporations, but many charities and foundations – many were sophisticated investors
- Fiduciary liability?

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Tax Benefits in Flux – Estate and Gift Tax Rates

- The 2001 Tax Act – EGTRRA – created dramatic changes
  - Uncoupled the estate and gift tax exemption amount
  - Froze gift tax exclusion amount at $1 million
  - Raised estate tax exclusion to $3.5 million – then no tax in 2010 – then back to $1 million in 2011
  - Marginal estate and gift tax rates decreased over the period to 45% -
  - 2010 - Free to die!
  - Now, $5 Million Exclusion Amount, Estate and Gift rates back together - But what next?

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Tax Rates Are a Moving Target

Year	Estate/GST Transfer Exemption	Estate/GST Top Tax Rate
2001	$675,000	55%
2002	$1,000,000	50%
2003	$1,000,000	49%
2004	$1,500,000	48%
2005	$1,500,000	47%
2006	$2,000,000	46%
2007	$2,000,000	45%
2008	$2,000,000	45%
2009	$3,500,000	45%
2010	No Tax/$5,000,000	0%/35%
2011	$5,000,000	35%

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How Far Does the Estate Tax Reach?

- Fall 2005 Statistics of Income:
  - 4.5% of all decedents filed returns
  - 2.16% were required to pay tax
  - See table showing population affected by estate tax

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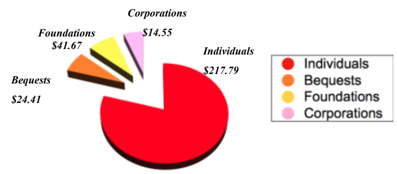
Charitable Giving Potential: Giving USA 2012



Total: $298.42 Billion

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IRS Statistics of Income Bulletin 2010 Tax Year

State	Number of Returns	Number of Itemizers	Number of Charitable Deductions	Dollar Value of Charitable Deductions
Kansas	1,308,115	408,893 (31.26% of all taxpayers)	332,852 (81.40% of all itemizers)	$1,657,178
U.S.	144,002,309	47,247,942 (32.81% of all who filed)	38,291,990 (81.26% of all who itemized)	$170,230,133

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Boston College Social Welfare Institute

- Intergenerational transfer of wealth from 1998-2052
- $41-$136 trillion in total dollars
- $6-$25 trillion in gifts to charity
- Interesting observations on giving attitudes and practices of wealthy

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Gap in Giving Patterns

- Independent Sector found 89% of all households gave to charity, and 44% of all adults volunteered
- NCPG found only 8% had left gifts to charity under will
- The gap represents the opportunity.

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The Climate in Washington

- June 2004 – SFC – Charity Oversight and Reform: Keep Bad Things from Happening to Good Charities
- Preceding hearing – SFC Staff Discussion Draft
  - 5-year review of tax-exempt status
  - Imposition of private foundation self dealing rules on public charities
  - Modification of intermediate sanction compensation rules – more accountability

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The Climate in Washington

- Preceding hearing – SFC Staff Discussion Draft
  - New compensation rules
    - Eliminate compensation to trustees (non-operating foundations) or set at statutory amount
    - Limit comp for disqualified persons
    - Comp over $200,000 ($75,000 for disqualified persons) require additional reporting and justification – approval of board in advance

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The Climate in Washington

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- Preceding hearing – SFC Staff Discussion Draft
  - Private foundation grantmaking awards
    - Calculating qualifying distributions
    - Elimination of excise tax for 12%+ payouts
    - No distributions to DAFs
    - Limit amounts paid for expenses

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The Climate in Washington

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- Preceding hearing – SFC Staff Discussion Draft
  - Increased/leverage enforcement
    - Joining forces with states
    - Larger fines
    - Independent audit required at certain size
    - Equity powers to U. S. Tax Courts
    - Standing to file with U. S. Tax Court to IRS or board member

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The Climate in Washington

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- Preceding hearing – SFC Staff Discussion Draft
  - Nonprofit governance changes
    - Standard of care
    - Compensation consultants
    - Requirement to set program objectives and performance measures
    - Size
    - Independent nature
    - Limits on who can serve
    - IRS can remove those who violate self dealing, COI, excess benefit, charitable solicitation

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The Climate in Washington

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- Panel on the Nonprofit Sector
- April 2005 – SFC – Charities and Charitable Giving, Proposals for Reform
- April 2005 – HWM – Hearing on an Overview of the Tax-Exempt Sector
- June 2005 – The Tax Code and Land Conservation – Report on Investigations and Proposals for Reform

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Recent Charitable Planning Developments

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- American Jobs Creation Act of 2004
  - Intellectual property
  - Vehicle donation laws
    - The sales rule
    - The significant intervening use exception
    - The material improvement exception
    - The transfer or below-market sale to needy exception

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PPA of 2006

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- Charitable IRA Rollover (70 ½) for 2006, 2007 - extended through December 31, 2009
- Conservation deduction expanded!
- Many reforms
  - Recapture on related use
  - Definition of DAF and "functionally integrated Type III SOs"
  - Excess benefits transactions on donor advised funds and Type III SOs
  - Excess business holdings on DAFs
  - Increased substantiation on DAFs

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National Heritage Foundation – The Saga Continues

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- National Heritage Foundation declared Chapter 11
- Discovery led to interesting findings
  - Investment management handled by company owned by NHF
  - Assets invested in risky investments – unsecured – with insiders – most of the money is gone
  - Problems with charitable gift annuities, charitable trusts – assets part of mix
  - Implications for other charities – bad cautionary tale that may catch the attention of Congress

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Increasing Number of Donor Lawsuits – and Standing to Sue

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- William Robertson et. al. v. Princeton University
- Howard v. Administrators of the Tulane Educational Fund
- The Barnes Foundation's Petition to the Orphan's Court
- Tennessee Division of the United Daughters of the Confederacy v. Vanderbilt University
- Fisk University v. Georgia O'Keeffe Foundation

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Ten Charitable Planning Ideas

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#1: Accelerating Charitable Gifts

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- Accelerate gifts destined for charity that generate no income
- Accelerate a gift of a home or farm by making a retained life interest gift. What if the client needs to leave?
  - Bargain sale
  - Bargain sale of the remainder interest
  - Bargain sale of the remainder interest for a gift annuity
  - Sale, splitting the proceeds

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#2: Estate Gifts of IRD Assets

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- IRD in income accrued but not taxed at death
- IRD assets: Pre-tax retirement plan assets, savings bonds, unpaid compensation, deferred compensation, accounts receivable, unrecognized annuity income, outstanding installment payments, accrued interest on stocks and bonds
- Goal: give highly taxed assets to charity

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Maximizing Retirement Plan Distributions Through Gifts

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- Retirement plan forms
  - Profit sharing plans - defined contribution
  - 401(k) plans - may include employer and employee contributions
  - 403(b) plans - nonprofit organizations
  - IRAs - most common form

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Maximizing Retirement Distributions

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- Plans not included in discussion
  - Pension plans - defined benefit, with no death benefit
  - Roth IRA

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Charitable Options in Distributing Retirement Plan Assets

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- Lifetime outright gifts? Yes, but could be expensive
  - Some relief through KETRA – but not absolute relief
- Torturous course of the Acts to allow lifetime giving – some relief in 2006, 2007

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Charitable Options in Distributing Retirement Plan Assets

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- Lump sum distribution from profit sharing plan to fund CRT (LR 200202078)
  - Donor retired, received retirement plan assets as in-kind distribution
  - Rolled a portion into IRA; received balance of shares outright; transferred portion of n-r share to crt
  - For n-r portion, ordinary income to extent of basis
  - Contribution to CRT did not trigger ordinary income or capital gain to the donor or contribution or subsequent sale

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Charitable Options in Distributing Retirement Plan Assets

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- Options at death:
  - Testamentary outright gifts
    - Testamentary gift in exchange for testamentary cga (LR 2002230018)
    - Outright gift to community foundation at death
    - Outright gift to private foundation
    - Gift to charitable remainder trust

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Comparison of Outright IRA Transfer to 5%, 20-Year CRUT Gift

	$250,000 Bequest of Retirement Plan to Family	$250,000 Bequest of Retirement Plan to 5% 20-Year CRUT
Total Estate	$4,000,000	$4,000,000
Total Taxes on $250,000 IRA	$87,500	$0
Effective Tax Rate	35%	0%
Net Bequest	$162,500	$250,000
Net Tax Savings		$87,500

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#3: Savings Bonds

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- First introduced in 1935 – widely held asset
- Accrued income is IRD
- Types:
  - Series EE Patriot Bonds
  - Series HH/H
  - Series I (CPI-U, adjusted every 2 years)
- Transfer of ownership triggers tax

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Options with IRD Assets

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- Specific devise to public charity
- Specific devise to CRT

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Other Common IRD Assets

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- Deferred annuity with death benefit
- Deferred compensation
- Unpaid compensation
- Accounts receivable
- Uncollected proceeds of a sale or the balance of an installment sale

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#3 and #4: Gifts of Closely Held/Family Owned Businesses

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- The single most important asset for financial and emotional reasons
  - The most significant source of income
  - Community profile and prominence
  - Life's work
- Advisors must raise the hard questions in financial, charitable, and estate planning
  - Transfer and tax issues
  - Anticipate more practical operational and emotional hurdles

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The Family Business in Estate Planning

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- 80% of all business entities (37% of Fortune 500, 60% of all public companies)
- Family businesses employ 60% of labor force (1999 figure)
- 70% do not survive to the 2^{nd} generation; 88% do not make it to the 3^{rd}; 97% do not make it to the 4^{th} or beyond.

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The Family Business in Estate Planning

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- 19% of family business participants have not created an estate plan other than will; only 37% have strategic plans; 85% assume family will succeed them.
- Leadership of 39% of family enterprises will change hands over the next 5 years.
- Wealth holders in family firms want to pass wealth and values to next generation.

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#4: Gift of Closely Held C Corporation to CRT

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- Most of today's business owners have built their own companies and own the stock
- Many have capital gains

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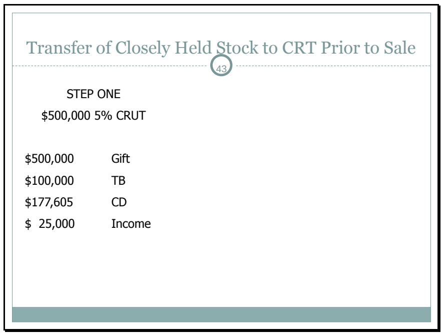

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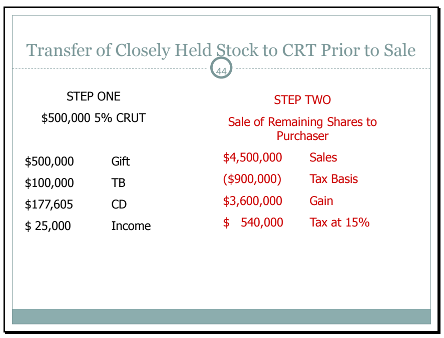

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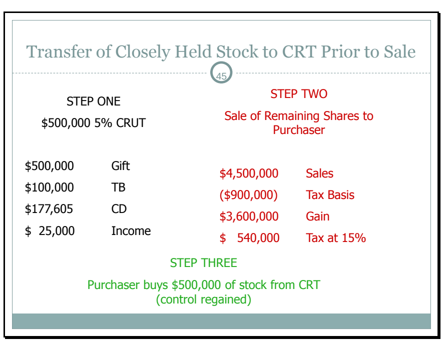

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#4: Closely Held C Corporation to CRT

- Allows corporation to purchase stock as treasury stock
- Maintains roughly same ownership
- Key Points:
  - If structured property, no constructive dividend
  - If interest is less than majority, IRS may require minority discount
  - Offer must be made to all stockholders

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#5 and #6 – Charitable Gifts that Fund Retirement

- Gift annuities attractive to many donors
  - Easy to explain and for donors to understand
  - Provides donor with guaranteed, specific income
  - Transaction is part gift and generates charitable income tax deduction
  - Beneficiary capital gain treatment
  - Easy to create

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Charitable Gifts That Fund Retirement

Current Pay Annuity Couple Ages 70, 71	
Contributed amount	$25,000
Charitable deduction	$6,150.00
Annuity	$1,300.00
Tax-free amount	$928.05
Ordinary income	$221.95

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#7: Funding Retirement: Series of Deferred Charitable Gift Annuities

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- Create a series of deferred charitable gift annuities with start date at age 65 (begin age 45 for 10 years)
- Options:
  - Payments may be structured to begin at the same date
  - Payments may begin in series
  - Donor may retain control of the date at which payments begin

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45 Year Old Donor Making Contributions for Ten Years; Payments to Begin at Age 65

Year at Date of Gift	Amount	Charitable Deduction	Annual Payment	Cumulative Annual Payments
45	$25,000	$2,500.25	$2,389.20	$2,389.20
46	$25,000	$2,500.25	$2,344.48	$4,733.68
48	$25,000	$2,500.50	$2,225.76	$9,259.44
50	$25,000	$2,500.50	$2,168.04	$13,639.24
52	$25,000	$2,500.75	$2,250.00	$18,013.76
53	$25,000	$2,500.50	$2,038.04	$20,051.80
54	$25,000	$2,500.25	$1,994.92	$22,046.72
		$25,004		

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Flexible Deferred Charitable Gift Annuity

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- Create series of deferred charitable gift annuities with flexible start dates
- Letter ruling 9743054 allows deferring start date
- Deduction is based on anticipated start date
- The later the payment begins, the larger the payment
- Good for younger donors

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$25,000 Deferred Flexible CGA, 45 Year Old Donor

Effective Start Date	Age at Start Date	Annuity Amount
2027	60	$1,758.48
2029	62	$1,976.04
2031	64	$2,237.84
2033	66	$2,556.76
2035	68	$2,950.72
2037	70	$3,445.28
2039	72	$4,077.12
2041	74	$4,875.00

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#7: The Value of Non-Grantor Charitable Lead Trusts in This Environment

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- Two types of charitable lead trusts for tax purposes:
  - Grantor charitable lead trust
  - Non-grantor charitable lead trust
- Difficult to be prescriptive – be careful with the math
  - Very rare to see grantor clts
  - More common – but still rare – to see non-grantor clts
- Special opportunities
  - Assets with depressed values
  - Shark fin trusts – variable rate with the major charitable payout at the end of the term

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The Value of Charitable Lead Trusts

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- The low interest rate environment increases the value of the charitable deduction.

20-year term, 5% payout	Gift tax deduct 2% CFMR	Gift tax deduct 5.8% CFMR
Charitable Lead Annuity Trust	$866,950	$582,920
Charitable Lead Unitrust	$636,270	$620,250

- Defective trusts – create a gift tax deduction and income tax deduction with a non-reversionary grantor charitable lead trust by retaining a grantor property – such as the power to reacquire trust property and substitute like property.

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#8, #9 – Charitable Gifts to Meet Family Needs

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- Individuals with special needs
  - Special needs trust created by a family member
  - Special needs trust created by the court
  - Pooled trusts
- Payment to special needs trust
- Payment using discretionary powers under CRT

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#10: Options in Family Philanthropy

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- What philanthropy can accomplish
  - Pass values to descendants
  - Makes families more effective in giving
  - Teaches newcomers to be thoughtful
  - Allows family to exert leadership in community
  - Increases giving

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Fostering Family Philanthropy

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- What philanthropy cannot accomplish
  - Not alternate employment plan

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Fostering Family Philanthropy

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- Options
  - Family Foundation
  - Supporting Organization
  - Donor Advised Funds
  - The Junior Board

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Talking to Clients About Charitable Objectives

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- Include gift planning as an element of the personal planning discussion
- Work with clients to identify personal goals

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A Checklist for Goal Setting

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- Are there sufficient assets for your spouse?
- How much do you want to leave to your children? In what form?
- How much do you want to leave to your grandchildren?
- Do your parents have special needs?
- Do your siblings have special needs?
- Do you want to benefit the IRS?
- Do you want to maintain control and flexibility?

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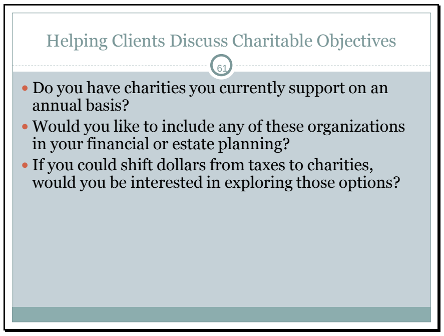

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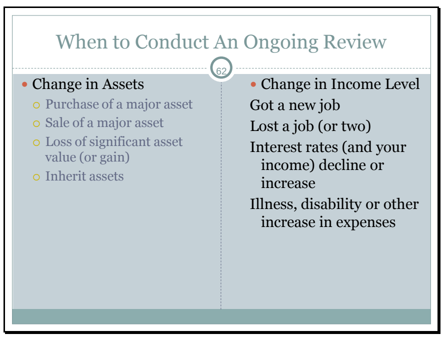

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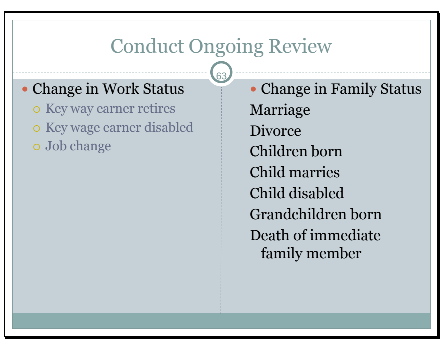

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Final Thoughts

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- There are still many opportunities for donors and charities in the current market.
- The key to effective charitable planning is to focus on the donor's goals.
- Incorporate charitable planning with personal planning for more effect
- Be sensitive to legislative changes