

# “Leaving a Legacy: Charitable Gifts as Part of Your Estate Plan”

By: Anne-Herbert Rollins, Esquire  
Miles & Stockbridge P.C.

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In a previous article, “Life and Death Planning: The Essential Legal Tools Every Person Should Have”, I spelled out the three (3) essential legal documents every adult should have in place as part of his or her estate plan. Specifically, those documents include: (1) a Last Will and Testament; (2) a Durable Financial Power of Attorney; and (3) a Durable Health Care Power of Attorney. Regardless of your current age, health, or circumstances, those documents are necessary to have in place to direct others as to your wishes and intent regarding your assets, your personal, financial and business affairs, and your health care and end of life medical treatment.

We have all heard the sayings about death (and taxes) being a certainty, and that “you can’t take it with you.” All of that is true. But although you truly can’t “take it with you” perhaps you can leave a legacy behind to benefit others, aside from what you may leave behind for your family. This can be done by including a charitable gift or gifts as part of your estate plan. And you can be sure that a charitable organization will appreciate and make use of all gifts it receives, large and small, in whatever form.

Charitable giving can take many forms. A Last Will and Testament (“Will”) is the document by which you direct how and to whom your individually held assets will be distributed upon your death. Your Will also appoints a trusted person, your personal representative, to administer your estate and to distribute your assets according to your expressed wishes, including gifts to charity. You can include a specific bequest in your Will to provide a certain monetary amount to a charitable organization. Rather than a specific monetary amount, you may also choose to designate that a specific percentage of your estate or residuary estate be given to a charitable organization. Specific bequests are made before the residuary portion of your estate, so by designating a percentage amount rather than a specific monetary amount, you can avoid the unlikely situation that you may have spent down your assets so that no residuary estate is left to distribute to your intended loved ones.

You can also designate in your Will a gift of securities, stock or other specific personal property items, such as antiques or fine arts.

You probably also have certain non-probate assets, which will pass outside of your Will, which may be gifted to charity by a simple beneficiary designation. You can designate a charitable organization as the beneficiary on a life insurance policy, Individual Retirement Account (“IRA”) or other retirement account.

You can also make a gift of real estate, either during your lifetime or as part of your estate. Real estate owned solely by you, and therefore passing through your estate during probate, could be included in your Will as a specific bequest of that property to a charitable organization at your death. If the real estate is your personal residence, you can retain a “life estate” to allow you to continue to reside in the property for the rest of your life and have the property go to the charitable organization upon your death.

Assets can also be gifted to charitable organizations by a Trust. A Charitable Lead Trust grants to the charity the first (lead) right to an asset for a term of years and the grantor’s heirs or beneficiaries under the Trust receive the balance of the Trust property at the grantor’s death. By contrast, a Charitable Remainder Trust pays the income from the assets held in Trust to the grantor or beneficiary, and

distributes the remainder to the charity upon the grantor's death. With proper planning, the grantor may receive an income tax deduction for the value of the remainder interest at the time the charitable gift is made to the Trust.

A real estate attorney can assist you with preparing any deeds to title your real estate in accordance with your intent, and an estate planning attorney can assist in preparing any Will or Trust documents specifically tailored for your individual needs. Most importantly, an attorney can ensure that any documents comply not only with your wishes, but also with Maryland law.

So while the adage is true that "you can't take it with you" it is also true that you can leave behind a lasting legacy by a gift to a charitable organization.

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