Bequest Success

(How to Win Friends and Influence People Across Your Organization)

Prepared By: Andrew Fussner and Lisa Smith

Introduction

If you have responsibility for the administration of testamentary gifts (i.e., Bequest Administration or Estate Settlement) at a charity, there are a variety of co-workers that you will inevitably have to speak with or share information with. These co-workers, who often work in different areas of the charity, may speak their own language and have their own unique motivations. The purpose of this presentation is to assist you in navigating those internal conversations.

We will explore four key groups within your organization that a Bequest Administrator will likely communicate with, and we will cover them in order from "least scary" to "most scary" in this paper. Those key groups are field fundraisers, accounting/finance staff, legal staff/General Counsel, and finally senior management and the Board of Directors. For each group we will start by exploring their motivation and need to gather bequest administration information and then discuss ways to speak with them, topics and words to avoid, etc.

One clarification before we begin talking to the "people in our neighborhood." This paper is focused on the "deceased" side of the ledger for charities – typically called Bequest Administration or Estate Settlement. We are speaking here from the perspective of professionals who handle post-death bequest administration, not from the "fundraising" side of things where the focus is on obtaining legacy intentions. We recognize that oftentimes both responsibilities are handled in the same "planned giving," "development/fundraising," or other department, and that the same person may hold both roles at an organization.

The Fundraisers

Depending on the organization, fundraising professionals may have one or more different titles, such as development associate, annual gift officer, major gift officer, and director of principal gifts. Regardless of the title, fundraisers share three main motivations.

First, fundraisers want to receive credit for the gifts they bring in. In some organizations each fundraiser has an individual dollar goal for the gifts they personally close. In other organizations, the fundraising department has an overall fundraising goal, which allows the fundraisers to pool their successes. Obtaining a certain number of legacy intentions or legacy intentions valued at a certain estimated dollar amount may also be part of the fundraisers' individual or group goal. Reaching or exceeding these goals may mean bonuses, promotions, or other benefits for the individual or the team.

In addition, fundraisers want to keep their current donors happy and cultivate new donors. Stewarding donors in the fundraisers' portfolio is an important part of the job. Some fundraisers are expected to make a specific number of phone calls, emails or personal visits each year.

Fundraisers are motivated to establish and deepen relationships with their donors, and of course they are also interested in identifying potential new donors that they can steward.

Lastly, fundraisers want to stay out of trouble with Legal and Finance and comply with their organization's gift acceptance and other internal policies. Experienced fundraisers know to avoid certain practices that are unethical or unwise and could possibly land their charity in legal or financial hot water. This may seem clear-cut, but it can be tricky because sometimes it is the donor who is requesting that the donor take these actions.

Fundraisers should have a clear understanding of the difference between the following two scenarios: (a) potential donors who express an interest in leaving a bequest to your organization; and (b) donors who have passed away and have named your organization in their estate plan. The first situation calls for stewardship and solicitation skills, such as understanding what the donor is interested in supporting, preparing a proposal, and providing the donor with will language. The second scenario, bequest administration, arises only after the donor has passed away, and the organization is advised that the donor has included them in their estate plan. At that point, your fundraiser colleagues must understand that the task at hand is not to make a solicitation or provide options for earmarking the funds, but to refer the matter to the Bequest Administrator.

Fundraisers should understand that, unlike donors who have complete discretion as to whether or not to make a donation to your organization, fiduciaries, including executors, trustees and personal representatives, are obligated to make the charitable gifts set forth in the trust or will. Although the difference may seem obvious, it can actually be difficult to figure out, particularly when the executor or trustee uses imprecise language about the nature of the gift or is genuinely confused about their proper role. These individuals may not understand that they are not the "donor", but rather a fiduciary with the obligation to carry out the wishes of the decedent as set forth in the trust or will. This may be especially true in the case of a husband or wife who is administering the estate of their deceased spouse. They may believe that they have the power to designate the purpose of the gift or impose conditions on the gift, regardless of what the will or trust states.

Educate your fundraisers about the unintended consequences – to bequest administration, to themselves, and to the organization – that can arise if they speak with fiduciaries under the mistaken impression that they are donors. To name a few: (a) the fundraiser may offer to restrict the funds to appeal to the "donor's" interests, but the will actually provides for an unrestricted bequest, which is far more desirable for your organization; (b) the fundraiser may propose a use for the funds to appeal to the "donor's" interests, but that use contradicts the terms of the will or trust and cannot legally be implemented; (c) the "donor" becomes upset and uncooperative when it is discovered that the donor is actually the executor or trustee, and promises made by the fundraiser need to be "walked back"; (d) the fundraiser may have spent a lot of time speaking with the donor and preparing gift proposals, only to discover that they may not receive credit for the gift because it was actually a bequest that was required to be distributed to your organization (depending on your organization's crediting policies); and (e) a tax letter is erroneously issued to the "donor" for their donation if the nature of the true nature of the gift is not discovered in time.

A hypothetical: Mr. Smith, a widower, approaches Melanie, the principal gifts officer at your hospital because he wants to make a million-dollar gift to support research for a rare disease that took the life of his child. Melanie works closely with Mr. Smith and provides him with several proposals for research projects. Mr. Smith confers with his attorney and decides to move ahead with the donation to support a particular doctor's research over several years. When Melanie receives the check, she is surprised to see that it is not a personal check from Mr. Smith, but rather an estate check for the Estate of Mrs. Smith, Mr. Smith's recently deceased spouse. Melanie immediately confers with you, her colleague who handles bequest administration, and you obtain a copy of the will from probate court. The will provides for an unrestricted million-dollar bequest to the hospital and does not give the executor, Mr. Smith, discretion over how to earmark the bequest. Even though the hospital would much prefer to receive unrestricted funds, it does not want to upset Mr. Smith. The decision is made not to approach him about releasing the funds for the hospital's general purposes. Melanie does not receive credit for the gift, even though she devoted so much time on it, because she did not, in fact, bring in "new" money.

To avoid these types of situations, educate your fundraising colleagues to recognize the difference between donors and fiduciaries. Ask your fundraiser colleagues to look out for the following "red flags" that they are speaking with the executor or trustee, and not the donor: (a) the "donor" mentions that their parent, spouse or other loved one has recently passed away; (b) the "donor" says that the gift is in "in memory" of a deceased relative; (c) the "donor" mentions that a lawyer is involved; and (d) the "donor" has no apparent connection to your organization.

If any of these red flags are present, the fundraiser should ask the "donor" whether the deceased person included this gift in their will, or whether this is a gift that the "donor" is making from the donor's own funds to honor the person who passed away. If the "donor" advises that the gift is included in the will, the fundraiser should immediately understand that this is not an outright gift; it is a bequest and should be handled by the person in the organization who handles bequest administration. Advise your fundraiser colleagues to involve you as soon as they realize that they are dealing with a fiduciary who is administering an estate or trust, and not with a donor who is considering an outright gift. And encourage them to loop you in if they aren't sure so that you can ask the hard questions of the "donor" – the sooner, the better.

Another hypothetical (spoiler alert: this one turns out better!): Ms. Johnson is a major donor to your university whose elderly mother recently passed away. Anthony, the director of development of your organization, has known Ms. Johnson for years and attends her mother's funeral. A few weeks later, Ms. Johnson calls Anthony to tell him that she is planning to make a gift in memory of her mother. Anthony (remembering the training he received) thanks Ms. Johnson and asks her whether the gift appears in Ms. Johnson's will or whether this is a gift directly from Ms. Johnson. Ms. Johnson replies that her mother left the university $50,000 and that she would like to designate the gift for a scholarship fund in the School of Arts and Sciences in her mother's name. After the call, Anthony loops in his colleague who handles estate settlement. They obtain a copy of the mother's will from Ms. Johnson's attorney and see that the will leaves a bequest of $50,000 for a scholarship fund in the Engineering School in memory of her husband. Understanding that he cannot promise to use the funds for a purpose that contradicts the will, he calls Ms. Johnson and

explains the situation to her. She is surprised to learn the details of her mother's bequest and appreciates the research that Anthony has done. She decides to make her own gift to establish a scholarship fund in the School of Arts and Sciences in her mother's name. It is a win all around. Ms. Johnson's mother's bequest is used as she intended; the university receives an additional $50,000 for another scholarship fund; and Anthony receives credit for the new gift.

Educate your fundraiser colleagues about a particularly thorny situation: the discretionary bequest. In the case of a discretionary bequest, the trustee or executor has some characteristics of a "donor" in that they have at least some power (as set forth in the trust or will) to determine whether or not your organization will receive the gift. (Anecdotally, it seems that discretionary bequests are becoming more and more popular.)

Discretionary bequests are a hybrid: they have characteristics of both outright gifts and traditional bequests. Occasionally, a donor will grant the fiduciary discretion as to whether or not to make a bequest to an organization. In the case of a charitable remainder trust, the trustee may have discretion to pick the charitable remainderman. <u>This discretionary power must be set forth in the will or trust itself</u>. The executor or trustee's discretion can be broad or narrow. For example, the donor may list the organizations to which they want to distribute gifts but leave it up to the fiduciary to determine the amount. Or the donor may describe the type of organization to which they would like to leave a bequest but leave it up to the trustee to select the specific organization. In a third scenario, the donor may list the organization to which they want to distribute a gift but leave it up to the fiduciary to select a specific program at the organization to support. Finally, the fiduciary may have unfettered discretion to select the charitable recipient.

Fundraisers may incorrectly assume that a bequest is "discretionary" because of the way the executor or trustee talks about the gift. Be sure your fundraiser colleagues understand the importance of obtaining a copy of the will or trust to verify that the bequest is not obligatory and that the fiduciary has discretion over the bequest to your organization. Fundraisers may not realize that in many situations it is possible to obtain a copy of the will from the probate court, even if the executor does not provide a copy. But if it's a trust, that is likely not an option. The tricky part about asking for a copy of the will or trust – regardless of who is making the request – is that the executor or trustee may not take kindly to the request. ("Why are you looking a gift horse in the mouth?" "None of the other charities asked me for a copy. Why are you?" "You don't trust me?") If the executor is upset, they may decide to give the bequest to a different organization.

Suggestions for navigating this difficult terrain: If the fundraiser is the main contact person, advise them to regularly refer to the fact that they are relying on the executor/trustee's representation that they have discretion over the gift. It is especially important that proposals regarding use of the funds contain this statement of reliance. This way, if it comes to pass that the language of the will reflects that the bequest is mandatory, not discretionary, and the will provision provides for a less restrictive use of the funds, there may be room to renegotiate the use of the funds. Another suggestion: if the executor/trustee seems a bit prickly, press for a copy of the document after the check is deposited!

Ideally, your organization should have clear policies about who should handle discretionary bequests – the fundraiser or the bequest administrator – and who should receive credit for "closing" a discretionary bequest. If there are not clear policies, the professional staff should collaborate on these gifts to ensure that your organization has the best chance of receiving the funds and that credit is issued fairly.

Fundraisers also need to be aware that the ways in which they interact with their donors today may have implications for bequest administration in the future. Specifically, after the donor passes away, the fundraisers' actions may be scrutinized for evidence of "undue influence" and used against your organization in a will contest. Fundraisers should understand that after a donor passes away, the donor's child or heir (and perhaps others) can challenge the validity of the donor's will by showing that that there was "undue influence"; that is, manipulation over the donor that resulted in the donor making a will that they would not otherwise have made. A child who was disinherited in favor of your charitable organization may challenge the will on the basis that your organization exerted undue influence over the donor through the actions of its employees. And the challenge need not come from the donor's children. It can also come from one of the other beneficiaries (an individual or even another charity) who claim that they should have received the bequest that was left to your organization.

Fundraisers must keep in mind that donor stewardship should not give the appearance of undue influence, especially in situations where the donor is elderly or ill and the fundraiser knows that the donor has included a gift to your organization in their will. Fundraisers should be aware that even if their intent is innocent, if their actions give the appearance that they are manipulating the donor, they may be jeopardizing the bequest to your organization. This can be a challenge, especially in a situation where the fundraiser and the donor have developed a close friendship and the donor requests that the fundraiser become more involved in the donor's life.

Elderly donors and donors with diminished capacity are especially prone to undue influence. Fundraisers who work with elderly, frail and isolated donors must be particularly vigilant because the vulnerability of the donor is an important factor when a court considers whether there has been undue influence.

So what is a fundraiser to do? There are no hard and fast rules, but as a general guideline, periodic visits, phone calls, and cards are likely fine. It is reasonable for a fundraiser to steward a donor by visiting, calling and sending cards. What about bringing the donor to their medical appointments and running errands for the donor? These can be problematic. Proceed with caution!

How about fundraisers who select the donor's lawyer, help the donor draft their will, witness the donor's will, or become the donor's power of attorney? These are "red flags" of undue influence – even if the donor wants the fundraiser to do these things. Fundraisers should be cautioned against becoming involved in the creation of the donor's will.

The Accountants

What motivates accountants (insert your own joke here)? There are four primary reasons you might find yourself talking to someone on your charity's Finance staff. First, your bookkeepers will want to make sure that any bequest distributions are properly coded for entry into your charity's accounting software system or records. Second, they want to be sure that the financial records of your charity are accurate and in compliance with GAAP (Generally Accepted Accounting Principles). Third, they want to be able to avoid or answer questions from internal or external auditors. Finally, they may be preparing a financial report or presentation.

As with most of these key partners, the key to success is learning to speak their mystical language. If you haven't ever taken a basic accounting or bookkeeping course, consider doing so – or at least buy a copy of Accounting for Dummies. Non-profit accounting is slightly different from for-profit accounting, but for the most part those nuances aren't going to come into play for a Bequest Administrator. That being said – here's your crash course in non-profit accounting.

Assets are the things that the charity owns that have financial value. This includes cash, investments, buildings, pledges, future and current interests in trusts and assets due but not yet received (account receivables). Liabilities are the things that the charity owes a third party. This includes loans, mortgages, salaries and other expenses incurred but not yet paid (account payables), etc. The difference between a company's assets and liabilities is called Equity in the for-profit world. However, as no one "owns" a non-profit, there's technically no equity to be had and it is just called Net Assets.

Compare the above with Revenue and Expenses. These represent the transactions that ultimately determine what your charity's assets and liabilities will be. Revenue (aka Income) are all the inflows of funds to your charity. Namely, that tends to be charitable donations, but it may also include receipts from the sale of goods or services, gains on investment assets, membership dues, etc. Expenses are all the outflows of funds from your charity. These include salaries and benefits, rent, grants made, overhead, etc. The difference between your Revenues and Expenses is your profit/loss or net income/loss for non-profits.

Fund accounting is one of those items unique to non-profit accounting. GAAP rules require that a charity designate its assets and liabilities into one of three different buckets. Fund 1 represents all the unrestricted assets and liabilities. Fund 2 is known as "temporarily restricted" and covers anything that is traditionally thought of as restricted, but can be spent (i.e., non-endowment assets). Fund 3 is known as "permanently restricted" and represents assets held in a charity's endowment or interests it has in perpetual trusts held by a third party.

Lastly, you should have a basic understanding of what Receivables are, especially as to Bequests. A receivable is essentially an asset your organization has "earned," but not yet received payment on. Is your charity waiting for payment on an item it sold to someone on credit? That's a receivable. For bequests, many charities book a Bequest Receivable (and hence recognize income at the same time) once they have a vested right in an estate or trust and the amount to be received is known or can be reasonably estimated. Each charity may have its own rules as to how and when

it will book a Bequest Receivable and your accounting team will want to confirm that any such bequest complies with those guidelines to "put it on the books."

Now that the hard part of all that terminology is over, let's look at three areas where you might cross-paths with an accountant at your charity. The first (and most common) area where you're going to interact with accounting is recording transactions and supplying financial coding. Our first piece of advice is to take the time to learn the financial coding system at your charity. For each item in a transaction there may be three to five different numerical codes that need to be entered to get the transaction into the system. You'll certainly have a general ledger (G/L) code for each type of revenue and type of asset (e.g., Bequest Revenue = 4805 or Cash = 1000). You may have to include a geographic or chapter code or a code indicating the type of donor. For restricted-use contributions there will almost certainly be some type of restriction code. Ask your accounting counterpart for a chart of accounts or anything that explains how coding is done in your financial system.

Any type of transaction is likely to need some type of supporting documentation, so you should know what your Finance team expects for each type of transaction. For Bequest Revenue, you might need to provide a copy of the will or trust instrument. For revaluing a split-interest you may need an up-to-date fair market value account statement. No doubt you already provide some type of documentation when you submit an expense report – this isn't any different.

Perpetual trusts and split-interest trusts that are irrevocable, but still have a life beneficiary receiving income, involve special accounting techniques that may require you to provide assistance and supporting documentation. You are almost certainly going to understand these types of trusts better than anyone in accounting. It's important to be able to describe how these trusts operate to your colleagues in accounting so they can make the necessary accounting entries to comply with GAAP as to these assets.

The last set of transactions that you are likely to play a role in relates to year-end procedures or "closing the books." This is almost always a stressful time for Finance staff, so this is a time for prompt replies and jargon avoidance. Any split-interest or perpetual trust that is "on the books" will need to be revalued at your fiscal year-end (just like stocks held by the charity are revalued on that date). You may have to confirm what Bequest Receivables are "outstanding" – meaning they haven't been paid in full yet – and whether any Bequest Receivables need to be adjusted or written off.

The second (and next most common) area of interaction relates to budgeting and projecting income. This is where you are asked to make "Carnac the Magnificent" guesses about how much bequest income you're going to receive in the future. Whenever asked to predict the future, I usually say something smart-alecky like, "if I knew exactly when people were going to die, I'd be working for an insurance company and making oodles of money." From experience, I would suggest you avoid using that line.

That being said, there are some tried and true ways to make an educated guess as to bequest revenue. To begin with, past is prologue, but not dispositive. Whenever you are asked to estimate bequest income for budgeting purposes, we suggest you look at the last three to five years of

bequest income as a starting point. Obviously, if you receive hundreds of bequests each year, you are more likely to get a somewhat consistent number from year-to-year. However, if your charity gets 50 or less bequests annually, future estimates are much more difficult to make.

Once you have a starting point, separate out all the "big ones" or outliers from any of those prior years. Some charities use $500,000 as the dividing line, but perhaps you might just remove the two or three biggest bequests you get each year. The reason for doing this is because more often than not, a very small handful of large bequests are the difference between a "good" year and a "bad" year. By taking those out of the mix, you can come up with a "base" bequest income that your charity gets each year, and you are more likely to find that number is consistent from year to year than the overall revenue number.

For budgeting purposes, I like to share that "base" bequest amount and indicate that the charity has probably a 95% to 99% chance of hitting that number. Then the question becomes, how much risk do you want to take that your organization will receive more or less of the "big ones" than in prior fiscal years. Consider providing a range of estimates with confidence intervals.

For remainder of the year projections, start with whatever you've received to date for the fiscal year and then add the average "base" amount you get each month for however many months remain in the year. Look at how many of those "big ones" you've already received this year versus how many you typically receive in a year. Adjust based on anything that you know is "in the pipeline," but hasn't been recorded yet. Admittedly, this is more art than science – but at least you'll have a rationale behind your numbers.

Accountants are typically conservative by nature, so don't try to pull one over on them by projecting a big number that will keep someone off your back in the short term but isn't likely to come true by the end of the fiscal year. They are concerned about real numbers and aren't fundraising cheerleader types usually. So, save the overly optimistic projection for your development staff.

Another word of advice when talking with Finance staff and others in this area – know the difference between income and cash flow. For example, when you are speaking with a colleague about bequests you expect to receive by year-end, be sure you are both on the same page and speaking the same language. Are you talking about a Bequest Receivable (income) or a bequest payment (cash in hand)? Development staff are more likely to be income focused, while Finance staff may be more cash flow focused.

The third and final area of interaction with your accounting staff relates to meeting audit requirements and handling auditor requests. Auditors are going to evaluate your charity's financial records on an annual basis to ensure that they comply with GAAP standards and are otherwise presented to the public fairly. You might think that's straight forward – the financials say there is $189 in the bank account and so check the bank account statement to see if it has $189. However, not all asset valuation is that simple – especially when talking about bequest-related assets.

There are a bevy of assumptions that often underlie the valuation of testamentary assets. Those will probably be set by your accounting staff, but it is important to know them yourself. That's

because consistency of treatment is a hallmark of a good set of books. Likewise, the assumptions and processes should be documented in writing. If you have the "rules" in writing and you are consistently following those rules in your treatment of bequest assets, you are much less likely to have any audit concerns.

Your accounting team is also likely to ask you to provide documentation in response to auditor requests. Auditors are often looking for three things when conducting their review and their requests/questions are designed to test those things. First, what is the timing of revenue. In other words, was the revenue recorded in the correct fiscal year. Therefore, date stamping any mail received is a good best practice to follow for all bequest administrators. Second, for bequest receivables, is there sufficient documentary support. Finally, for restricted gifts, is there sufficient documentary support.

A final word of advice. Auditors are accountants, too. Even if they are very well versed in non-profit accounting, they are unlikely to really understand probate and how trusts like CRATs and CRUTs work. So, when you get a request from an auditor, determine what they are really trying to get at with the request (see the above three areas of audit concern). Often you will find that you have "overthought" what they are asking for or that they are using a probate term much differently than you typically do. We've also found that less is usually better with auditors.

Once you can speak with accountants, you're ready to move onto lawyers.

[Fussner – who is both an accountant and a lawyer – likes to share his favorite joke about both groups. Q: What's the difference between accountants and lawyers? A: Accountants know that they are boring.]

<u>The Lawyers</u>

A quick note about our use of the term "lawyers" in this section. We recognize that, depending on the size and structure of your charity, you may have a general counsel and staff attorneys in-house, a designated lawyer or law firm on retainer, or a legal advisory council or board member who provides pro bono legal services. Our hope is that this section will apply to you regardless of the type of lawyers you have access to in your organization.

One of the major roles of your organization's lawyers is to identify, assess and mitigate risk to your organization, including legal, reputational and business risks. Your lawyers also want to keep your organization out of litigation, which is expensive, time-consuming, disruptive, and may lead to negative publicity. They often also serve as the chief compliance officer, making sure that your organization is complying with local, state and national laws. In charitable organizations, they are particularly vigilant about maintaining the organization's non-profit status. Your lawyers want to keep negative stories about your organization out of the newspaper and social media. Whereas non-profit organizations used to just worry about newspaper headlines, now they have to worry about Facebook posts and other comments on social media that may quickly spread and harm your organization's reputation, even if they are unfounded. Finally, your lawyers likely view your charity holistically and are always considering whether a particular activity or action – even if it is legal and doesn't pose a danger to your organization's reputation – will serve the best interests

of your organization.

Your lawyers have an important role in relation to bequest administration, but the scope of that role depends on the culture and policies of your organization. As professionals handling estate settlement and bequest administration, you may need to bring all legal documents to your attorneys for approval. In many organizations, "plain vanilla" receipts and releases may not require legal review, but all other documents do, such as waivers and settlement agreements. If there are no written policies, it is important to sit down with your organization's attorneys and agree upon which documents require legal review.

If an estate becomes embroiled in litigation or potential litigation, it is likely that the parties will engage in settlement discussions. If you find yourself headed down that path, you should involve your charity's attorneys as soon as possible. It should be clear who has authority to make the final decision on whether to enter into a settlement agreement or go to trial, e.g., general counsel, executive committee, or CEO.

Your organization's gift acceptance policy should provide guidelines for the acceptance of gifts of real property and illiquid or unusual assets. If the executor of an estate wants to distribute real property to your charity, let the head of your real estate committee know. If your organization does not have a real estate committee, consult with your lawyers as soon as possible to discuss the process of determining whether your organization should accept this bequest. Be especially vigilant if one of the assets in the estate is a minority interest in a real estate partnership that the executor wants to distribute in-kind because there is no way to sell the asset and distribute the proceeds. Your organization may not be interested in accepting such a minority interest, particularly if it generates little or no income.

There may be a statutory deadline for your charity to disclaim real estate or other non-monetary bequests that it does not want to accept, and you do not want to miss that deadline. And if you discover that a trustee has transferred real estate to your organization via quitclaim deed without your organization's prior consent (yes! this can happen), let your lawyers know immediately so they can put the asset on the books of your organization, insure it, and pay any taxes owed.

Lawyers don't like surprises, so if you have reason to believe your organization is going to be involved in a lawsuit, let them know as soon as possible. Keep in mind that if your charity is named as a party in a lawsuit, it does not mean that there are allegations of wrongdoing against your organization. It's possible that your organization is named in the lawsuit simply because it is a beneficiary under the deceased donor's will. For example, if the donor owned property that is being foreclosed after the donor's death, your charity may be named as a party to the foreclosure action. Perhaps the executor brings a petition to ascertain the identity of one of the other beneficiaries. Your organization may be served with papers even though your rights are not affected. Let your lawyers know even if the claim is innocuous. They may decide to do nothing, or they may still want your organization to respond to the lawsuit or petition.

Other litigation scenarios may involve allegations that your charity engaged in some type of wrongdoing in connection with an estate. If you become aware of these allegations, let your legal counsel know immediately. Even if you learn about these allegations through a phone call or email and nothing has been filed in court yet, do not hesitate to loop in your lawyers.

During the course of administering an estate, you may encounter situations in which you feel your organization's rights are being compromised or jeopardized. Some potential scenarios: (a) a disgruntled heir brings a will contest which, if successful, would significantly reduce or even eliminate the bequest to your organization; (b) the administration of the estate is dragging on for far too long for no discernible reason and despite repeated requests that the executor take action; (c) you believe the executor or their attorney is being negligent (or worse) in how they are administering the estate; (d) the will does not accurately state the name of your organization and the executor has petitioned the court to identify the proper entity; and (e) you receive credible information that the bequest to your organization was eliminated or reduced under suspicious circumstances, such as potential undue influence by a bad actor who had the donor execute a new will near the end of the donor's life (could be a family member, caregiver, or anyone else with access to the donor).

In any of these situations, let your charity's lawyers know what is going on and why you are concerned. If circumstances warrant (and in particular if the amounts at stake are significant), discuss with your legal counsel whether your organization should retain a law firm for the specific purpose of representing your organization's interests. Reach out to other organizations named in the will or trust and compare notes. Perhaps all of the charities can join forces and retain the same firm.

Be sure to keep your lawyers (and communications department) apprised of any potential reputational threats to your organization involving a bequest. Some potential scenarios: (a) you learn that a reporter is planning to write an article that may negatively portray your organization's role in a will contest; (b) you learn that your organization is being threatened with bad publicity by an executor or trustee to pressure your organization to waive its rights (e.g., to demand an accounting) or to accept a smaller gift; or (c) a disgruntled heir makes an angry post on social media that casts your organization in a negative light.

Let your lawyers know about situations like these. They may wish to monitor the situation, advise senior management, or take steps to counteract the negative portrayal of your organization.

The Senior Managers and Board of Directors

At last, we have come to Senior Management and the Board of Directors. You'll probably have a lot less interaction with this key group than any of the other three groups – but the stakes are usually a bit higher.

As we have with the other groups, we need to first look at the motivations of this group. Here, there are really two different sets of motivations. For Senior Management (C-Suite), they need to (1) look good in front of their Board, and (2) are concerned about short-term financial goals (and

possibly how those goals affect their bonus). Board Members have the luxury of being more long-term focused. While they will be concerned with the short-term financials, they should also be looking out for the long-term health and stability of the organization. Board Members are also concerned about protecting the image of the charity and avoiding public controversy.

With those motivations in mind, let's discuss some of the ways you might interact with this key group of individuals. Perhaps the first thing you'll be responsible for is the education of these folks around Bequest Administration – as they are likely to have little to no background in this area. Keep it simple and as jargon free as possible. A manager of mine said when talking to a Board – "be brief, be bright, and be gone" – good words to remember.

We ALWAYS like to start off any Bequest Administration conversation with a reminder about the difference between Planned Giving/Charitable Estate Planning (i.e., living donors) versus Bequest Administration/Estate Settlement (i.e., dead donors). While the two certainly go together, as we discussed earlier in this paper, they should be looked at in very different ways.

If you aren't personally responsible for BOTH planned giving and bequest administration at your organization, bring along the person who is responsible for planned giving if you are educating this group. Briefly share the history and context of your bequest program but focus on the numbers that are going to have real meaning to these people.

The second way you are likely to interact with this group is regarding the acceptance of certain types of in-kind bequest gifts. You probably don't need special permission to accept cash from an estate or trust, but make sure your charity's gift acceptance policy covers bequests and other planned gifts. What type of assets require advanced approval before your charity can accept them and whose approval is needed. This is especially true for those rare, tricky assets like a limited partnership interest or oil royalties. You'll also want to know who's responsible for approving or disapproving of any unique gift restrictions that need to be honored or special requests from the executor or trustee that fall outside of how your charity normally recognizes a donor. Come prepared with the necessary background and a suggested resolution when speaking to Senior Management about these topics. If you are working with a Gift Committee, remember that you should (if possible) provide them with sufficient lead time and enough background materials before they meet to make any decisions.

Along these lines you should also work with your organization to make sure that you have a valid Corporate Bequest Resolution that's no more than one year old, showing who authorized signers are when it comes to Bequest Administration matters.

The third area (and the one that causes the most headaches) relates to goal setting and making projections. A good deal of what we discussed regarding the accountants before applies here as well – but at a much more general level. Typically, Senior Management and Board members aren't going to want the details of how you came up with a number you are reporting (unlike the accountants), but they are going to want to know what your confidence level is in that number. Remember this group is concerned with risk – so they are constantly watching the environment for surprises.

If you do get more into the weeds in this area, it's usually not a bad idea to remind these people that Bequest Administration income flows are very different from special event or direct mail income. As no donor can really "give another bequest" in the next fiscal year, you are starting from zero each year (unlike an annual special event fundraiser which is likely to have many of the same donors return year-after-year).

Be ready to explain both the impact and time-lag of planned giving activities on Bequest Income. What the planned giving staff did six months ago generally has ZERO impact on bequest income coming in today. Know the difference in the average age of your charity's typical planned giving donor and typical bequest decedent. It's likely at least 10 years in most cases. Hence, planned giving's impact is much more difficult to measure or quantify. Additionally, literally every interaction a donor has with your charity over time is going to play some role in whether your charity is named as a beneficiary of that donor's estate or trust.

As discussed earlier, be prepared to discuss the impact of "outlier" or "mega" bequests on year-to-year Bequest Income. Most businesspeople understand the concept of one-offs and how they can skew numbers – but you need to remind them that also occurs with Bequest Administration.

Finally, when it comes to long-term projections (tell us how much Bequest Income we will be taking in a decade from now), remember a couple of things. Don't freak out even though it's at best a mildly educated guess. It's unlikely any Board Member or Senior Manager is going to be around ten years from now, let alone remember what you said ten years ago. That being said, partner with your planned giving staff and know both the percentage of bequests that your organization receives advance notice of and the percentage of bequest gift commitments that fail on average. So, if your charity typically has a ten-year gap between gift commitment and matured bequest and someone wants to know what Bequest Income is likely to be in ten years, start with the amount of PG Commitments recorded this current year (let's say it's $500,000). If you typically have a failure rate of 20% - now you're looking at $400,000. If bequests known in advance are 10% of the total annual bequests – you're looking at $4,000,000 in Bequest Income down the road – all things being equal.

The last area that you might interact with Senior Management and Board Directors relates to modeling behavior. Although this is probably something that's more in the Planned Giving Director's wheelhouse, take the time to quickly explain why those folks should become members of your legacy society. Help them accomplish that by sharing how easy it is to change a beneficiary designation on their retirement accounts.

Boards are often made up of competitive people, so compare your charity with other charities using 990s and Annual Reports to make points about where your charity is strong and where you need resources to catch up.

Lastly, Planned Giving and Bequest Administration staff are the primary voices for avoiding "short-termism" in an organization. Ask Board Members what legacy they are personally leaving to the charity (and we aren't talking monetary here – but supporting planned giving and bequest administration efforts).

Conclusion

Bequest administration is a critical component of ensuring that your organization receives the legacy gifts that your donors intended. As bequest administrators, you should be sensitive to the motivations, expertise, and lingo of the key constituencies that you deal with. Build up good will among your colleagues and board members. Set aside time to conduct training and presentations so that they understand what you do. Provide them with written guidelines about issues that should be brought to your attention. Take the time to learn the issues that are critical to them, such as fundraising credit, proper accounting of bequest receivables, potential litigation, and projections of bequest income. Collaboration, communication, and cooperation among these different groups is critical to running a successful bequest program.

PRACTICAL PLANNED GIVING CONFERENCE
SPEAKER EVALUATION

Date: ___________________ **Speaker:** ____

Name (optional): ____

Please rate the following:

	Excellent	Good	Neutral	Fair	Poor
I. OVERALL	5	4	3	2	1

Were your major objectives for this session met? Was the content of the session vital, timely, substantive?
Comments:

II. RELEVANCE	5	4	3	2	1

Was the subject matter directly related to the requirements of your job?
Comments:

III. VALUE	5	4	3	2	1

Do you believe the benefits of this session were worth the time, effort and cost?
Comments:

IV. SPEAKER	5	4	3	2	1

How was their presentation style? Did the session move along at the right pace? Did they have appropriate knowledge on the topic?
Comments:

V. MATERIALS	5	4	3	2	1

Were the materials clear and organized and appropriately helpful for the session?
Comments:

Vi. What did you like the most about the session?

VI. Any suggestions to improve future sessions?

XII. How many years of gift planning experience do you have? _______