



# CHARITABLE BEQUESTS: HOW TO MAKE THEM LAST

## Articles

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**No one likes talking about death.**

**No one likes thinking about death.**

However, planning for your death -- an inevitable event for all of us -- can be one of the simplest ways to control the disposition of your assets after you pass. A good estate plan can also work to reduce taxes due at the time of death, while also allowing you to make meaningful charitable contributions.

### **Employ a Professional**

While in many states you can handwrite a Will, or even type out your Will on an iPad; to avoid any ambiguity as to your final wishes, and to prevent litigation, it is recommended that you seek professional assistance in creating your estate plan. Further, you should find a practitioner who is licensed to practice in the state in which you currently reside.

There has been a growing trend towards using internet services and "do-it-yourself" kits that provide general forms and templates for Wills and other legal documents. These forms can be dangerous as they are a one-size fits all approach to estate planning – a matter which requires personalization.

### **Commonly Litigated Issues as to Charitable Bequests**

Litigation has arisen in the interpretation, construction, and implementation of charitable gifts in the following scenarios:

- A poorly drafted Will can result in litigation if there is question as to whether a bequest or trust is indeed charitable. In general, a charitable trust is a trust "created to benefit a specific charity, specific charities, or the general public rather than a private individual or entity." BLACK'S LAW DICTIONARY 1547 (8th ed. 2004).

- Courts will apply the doctrine of *cy pres* – and modify charitable bequests – in situations where it becomes impossible, impracticable or illegal to carry out the testator’s particular charitable purpose. Restatement (Second) of Trusts § 399 (1959). Thus, it is important to always revisit your Will and update it accordingly, confirming that charities are still in existence and engaging in the same type of charitable work for which you gave the gift.
- Consider making your bequests condition free. Consider what would happen if your condition could not be fulfilled. Remember that anyone with standing can contest your Will, i.e., a beneficiary who feels slighted by the terms of the Will, a potential beneficiary, an ex-spouse, stepchildren, children, or siblings.
- Discuss your plans with the charity in advance, especially if you intend to leave tangible objects, such as artwork or antiques. You want to work with the charity to ensure that it can make use of and accept your gift.

By enlisting a professional and avoiding some of these common pitfalls, you can make a gift to charity that has a lasting impact.

*This article was written by Melissa Osorio Dibble, Esquire, an Attorney at Archer & Greiner, P.C., and a member of Samaritan’s Planned Giving Committee, a volunteer group of the region’s leading financial professionals, lending their expertise to guide our charitable estate planning efforts.*

## Related People



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