

GUEST ARTICLE: More Than Money - What A Donor Should Know About Gifting Non-Cash Assets

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You're interested in philanthropy but you have non-cash gifts in mind - what sort of issues does this present?

Philanthropic contributions will often take the form of hard cash or other relatively liquid investments such as listed equities, although of course as important as money is the philanthropist's time and attention. In some cases, however, a philanthropist will not have much in the way of liquid assets but will have immovable, illiquid property and assets such as houses, land and operating businesses. These create particular challenges in terms of transfer, control, taxation and monitoring. As the field of philanthropy continues to evolve, it is important to see how non-cash assets should be addressed.

A person highly qualified to talk about this is Susan Winer, chief operating officer and founder of Strategic Philanthropy, a firm headquartered in Chicago. Susan is a regular commentator for Family Wealth Report (see a previous article of hers [here](#).) Her firm works solely with high net worth and ultra-high net worth donors, and was established in 2000. In a series of articles, she is setting out some of the most important issues in philanthropy and financial advice, not just for those in North America, but around the world. The editors of this news service are delighted to share these insights and we hope they stimulate debate; readers who want to send in commentary and feedback should contact the editor at tom.burroughes@wealthbriefing.com

If you have a client who would like to be more philanthropic but does not necessarily have the liquidity to do so in a way that will achieve the kind of impact around the issue or issues he or she cares most deeply about, there may be some interesting options to consider. Most notably, they may want to consider donating non-cash assets.

Using assets such as art, securities, land or intellectual property as an alternative to, or in addition to, traditional financial support of an organization or institution is becoming increasingly popular. It is a way to preserve capital, by using other available assets for a good cause. There are tax benefits, and a donor can potentially avoid capital gains taxes that may arise if the asset is sold, while simultaneously getting a charitable deduction.

Along with the positives associated with contributing non-cash assets, there are also pitfalls and challenges that a donor needs to take into consideration. For example, the value of the asset may be greater to the holder than to the recipient of the gift. This is particular true when intellectual property is involved. The holder of a patent, trademark or copyright may attribute greater value, because they created the asset and have an emotional connection to it. Then there is the issue, for the recipient organization, of what to do with the gift. Securities are easy; there are clear liquidity opportunities. Hold on to them and reap the reward when they increase in value or sell them for the current value. If they are interest or dividend bearing securities, the interest or dividends can provide much needed revenue or be reinvested.

Other non-cash assets can be more of a burden to an organization than a benefit. Organizations need general operating support (which is financial) to keep the lights on, to fund initiatives, to continue to do the work they are committed to doing. While every gift is appreciated, what does an organization do with a piece of art? If there is not a ready market to sell it, if the organization so chooses to do this.

A gift of land carries with it the burden of ongoing costs for maintenance and taxes. Unless the land gift includes the financial resources to cover these costs, the recipient organization may have inherited an additional financial burden that it simply cannot absorb.

A more complicated non-cash asset is intellectual property (IP). Even when properly valued, IP poses some unique challenges for both the holder of the IP and the recipient.

There are four categories of IP content:

- Trademarks;
- Patents;
- Copyrights; and
- Trade Secrets—this can be a fuzzy area.

There can be overlaps - a work covered copyright or patent might also be a trade secret. Alternatively, an individual could own the rights in the underlying work, but the application of the work may be covered by a separate intellectual property right. In these instances, ownership of both interests needs to be addressed to ensure that the appropriate actions have been taken to value, protect, and transfer the rights and interests. The following charts provide a brief overview and context for non-cash assets.

What a donor should know about donating non-cash assets:

- Is the ownership of the asset clear and unencumbered? For example, if the gift is land it needs to be free and clear. If the donor wants the land to be used in a certain way, or has specific restrictions or expectations, this may cause problems for the recipient organization;
- Does the donor have full ownership? For example, partial interest in any intellectual property is non-deductible. In order for a donor to receive credit for the gift, they must donate their entire interest in the intellectual property;
- If the asset is a piece of art, is there documentation of provenance? It must accompany the art piece along with valuation;
- If the gift is licensing rights, the recipients must adhere to the licensing terms. This can place a burden on an organization not equipped to enforce the rights;
- If the gift is a copyright of a book, for example, the charity may get the royalties associated with the copyright. However, if the copyright is shared between the author and the publisher or other parties, there has to be agreement regarding the relinquishing of rights; and
- If the creator of the asset donates it directly, and has not sold the asset previously, then he or she can only get a deduction on the cost basis, not the market value of the asset since market value has not been determined. Valuation is based on market value of the same or similar item or replacement value or present value of revenue generated (royalties x length of patent or trademark rights).

It is always a good idea to discuss the viability and applicability of a non-cash gift with the intended organization. In this way, the gift can be constructed in a way that will work for both the donor and the organization.

A final consideration: In many instances, gifting non-cash assets should be one of the discussion points in the estate planning process. Are there valuable assets that would reduce the taxable corpus or that may not be wanted by heirs.

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