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GUEST ARTICLE: Ensuring A Major Gift Works For All Parties

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Negotiating a successful gift considers both parties' interests and finds the commonalities of intent and opportunity, argues philanthropy advisor and expert Susan Winer.

The author of this item 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

Making a significant gift, whether cash, stocks, or complex non-cash assets (or combination thereof), can be both exciting and daunting. Whereas there is no hard and fast rule about what constitutes a significant gift, what we are referring to here are gifts over $500,000 to an organization or institution for a specific agreed upon purpose. While gifts like this provide an opportunity for an organization to successfully pursue an initiative that will add value for all stakeholders, this is also a strategic and business decision and requires careful thought, mutual understanding of objectives and timelines, and detailed documentation.

Whether it is an endowment, a naming opportunity, a legacy gift or for a specific purpose, it is important to ensure that the funds will be used as the donor intends. While this sounds simplistically obvious, the number of major gifts that have been challenged over the years, by the donor, the donor's family or the recipient institution is indication that this is not always the case.

The most obvious scenario is a conditioned gift, wherein there are defined restrictions or conditions that if not met may result in litigation. Garth Brooks sued a hospital in Oklahoma (and won) over naming rights of a women's health center that was supposed to have been named after his mother, but the hospital claimed they could use the funds for other purposes. Then there is the case of the family that sued Princeton University because after many years the University purportedly sought to divert the funds for purposes other than what the family thought was the original intent of the gift.

A more recent example of a conditioned gift that ended up in court is the story of Bill Davidson, former Detroit Pistons Owner, whose estate was sued by a charity after he passed away. The charity claimed Davidson made a $5 million pledge, $4.8 million of which was still outstanding. It was speculated that the $5 million pledge was conditioned on 20 other donors pledging to the charity. The claim was eventually settled out of court.

These high profile cases, wherein a major gift that started with the best of intentions and then became the center of controversy, did not need to happen.

Over the years, we have had the privilege and pleasure of helping numerous donors (and their trusted advisors) make major gifts, sometimes as part of their larger lifetime or legacy philanthropic strategy, and sometimes as a stand-alone. We have facilitated $1 million gifts and $60 million gifts (and many in between) for the launch of specific programs, the naming of buildings, organizational or programmatic innovation, or to establish an academic chair. In all instances, how the gift is structured is almost as important as the gift itself.

A significant gift is a nuanced transaction. To facilitate the success of that transaction we thought it would be helpful to address some of the more important discussion points that will ensure that both your client and the recipient of the gift are protected, and feel confident about the partnership they are creating.

What you and your client should talk about

- What is the motivation for the gift? Is it a one-time gift or part of a larger philanthropic strategy? What does he or she hope to accomplish with their gift?
- Is the donor interested in receiving the maximum tax deduction from this gift or the assets used to fulfill the gift?
- Are there residual responsibilities for the donor's family members after the donor's death?
- Has the organization or institution's financial sustainability been thoroughly vetted? It is important that the gift is "right sized" and does not overwhelm or create undue burden for the recipient. A $5 million gift to an organization with a $2 million budget can be both daunting and potentially damaging.
- If your client has a particular interest or wants to achieve specific outcomes with his or her gift, is there someone who can ask the "tough" and relevant questions? Equally important as asking the questions is being able to put the answers into context and being able to articulate the implications of the responses to the donor, so that informed decisions can be made.
- Does your client wish to remain anonymous or to be acknowledged for the gift? This is an important starting point in conversations with the proposed recipient organization.
- If the goal is a naming opportunity, numerous considerations need to be discussed to protect the donor and his or her heirs including who needs to be apprised of the terms and conditions of a gift and who will monitor that gift and the recipient organization once it is finalized.
- If the donor is funding an endowment, what is the spending plan for the endowment, and what is the plan for revenue generation if the donor is not the sole funder?
- Have the "what ifs" been discussed? This is critical to successful negotiations. What if the leadership or strategic direction of an institution changes? What if the organization receives an equal or greater gift with the same parameters and expectations? What if the gift was to seed an endowment or initiative and insufficient funds were subsequently raised. Is there a level of flexibility in the agreement to handle the "what ifs"?
- What does the donor want/expect with regard to reporting, communication and/or active involvement?

While there are as many questions as answers. The keys to protecting both the intent of the donor and the capacity of the recipient institution to be successful upon receipt of the gift, is transparency and communication.

Philanthropy that is effective and meaningful is a partnership between the donor and the organization established. Negotiating a successful gift considers both parties' interests and finds the commonalities of intent and opportunity.