Planned Gifts as Part of your Client's Financial, Estate, and Giving Plans

As an attorney, your practice is related to the law, but when you work with a client, you are likely to get involved in aspects of their financial, estate, and giving plans. While having a client simply "write a check" to their favorite charity is a viable way to give, there are many other techniques that can better serve your clients and allow them to take full advantage of their particular financial and personal situation. This article will give you a basic outline of the characteristics of several planned gifts, client circumstances in which they might be appropriate, and how you can get more information, including gift illustrations, customized to your client situation.

When discussing planned gifts, one should remember 85 percent of planned gifts are simple bequests written into a will. When helping a client with a simple bequest, it will serve you, your client, and the charitable beneficiary well if you contact the charity to obtain accurate name, tax ID# and, if the client plans to place guidelines or restrictions on the gift, whether those restrictions will "work" for the charitable beneficiary. The North Dakota Community Foundation and many other charities will provide draft language that provides the necessary information and can help craft a bequest provision that accomplishes your client's charitable goals and which is able to be effectively and efficiently administered for the benefit of the charitable beneficiary.

Probably, the next most popular planned gift is a Charitable Gift Annuity (CGA). The CGA is a contract between your client and the charity in which the donor transfers something of value to the charity and is paid a fixed annuity payment for their lifetime. Once the CGA "matures," the remainder (if any) is for the use of the charitable organization to accomplish its mission. If you have a client who is sitting with dollars in a bank account earning one percent or two percent, and who doesn't have need of the principal for immediate or emergency needs, a CGA can provide an immediate tax benefit to them, a substantial increase in their income, and the ability to support the charity with a nice gift.

When advising a client regarding a CGA, be sure the charity has substantial assets, as those assets are all that is backing up the annuity payments promised to your client. Nearly all legitimate charitable organizations use the rate chart published by the National Council on Gift Annuities, so donors establish CGAs at charities which they are interested in supporting, not just "shop for rates" as they might with certificates of deposit. The donor receives a charitable tax deduction for the calculated remainder value to charity (roughly 50 percent of the amount placed in the annuity) and, if the donor is a North Dakota taxpayer, they will also receive the 40 percent North Dakota income tax credit for establishing a deferred gift to a qualified North Dakota charity.

Sample Annual Gift Annuity Payout For a $10,000 Gift*

Age	Annual Annuity	Income Tax Deduction**	Income Taxed	Tax-Free Income	Maximum ND Income Tax Credit
60	$470	$1,486	$170	$300	$1,093
65	$510	$1,595	$169	$341	$1,093
70	$560	$1,721	$167	$393	$1,093
75	$620	$1,873	$157	$453	$1,093
80	$730	$1,973	$179	$551	$1,093

*rates subject to change, for illustration only
** income tax deduction in year of gift only

Let's look at the less common, but still useful charitable trust, both remainder and lead. With a charitable remainder trust (CRT), of which there are two main types, annuity trust and unitrusts, a client/donor transfers something of value to the trust. This could be cash, securities, real estate, farm commodities (special rules apply), etc. When the transfer is made, the donor will receive a charitable income tax deduction for the present value of the remainder which will eventually pass to charity. The donor needs to designate a charitable remainder, which in some forms of trust can be changed at a later date by the donor/trustee. A trustee is chosen - this can be a corporate trustee, the donor can act as trustee, or an independent third party. This is a big responsibility, as the trustee must invest the assets in the trust, make the annual payments to the income

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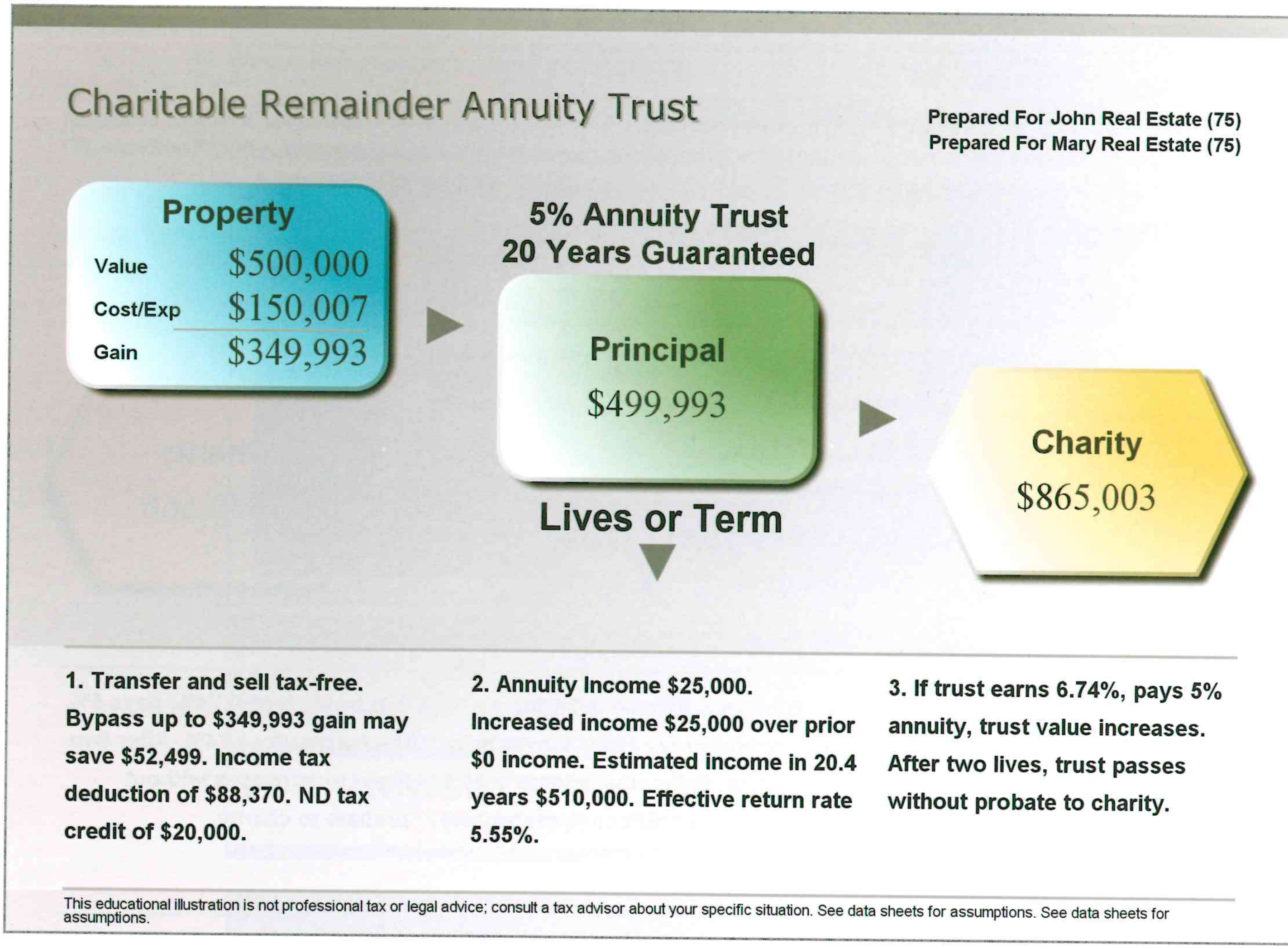


beneficiary(ies), prepare the annual tax return (the trust will have its own tax ID#), and provide form K1 to the income beneficiaries.

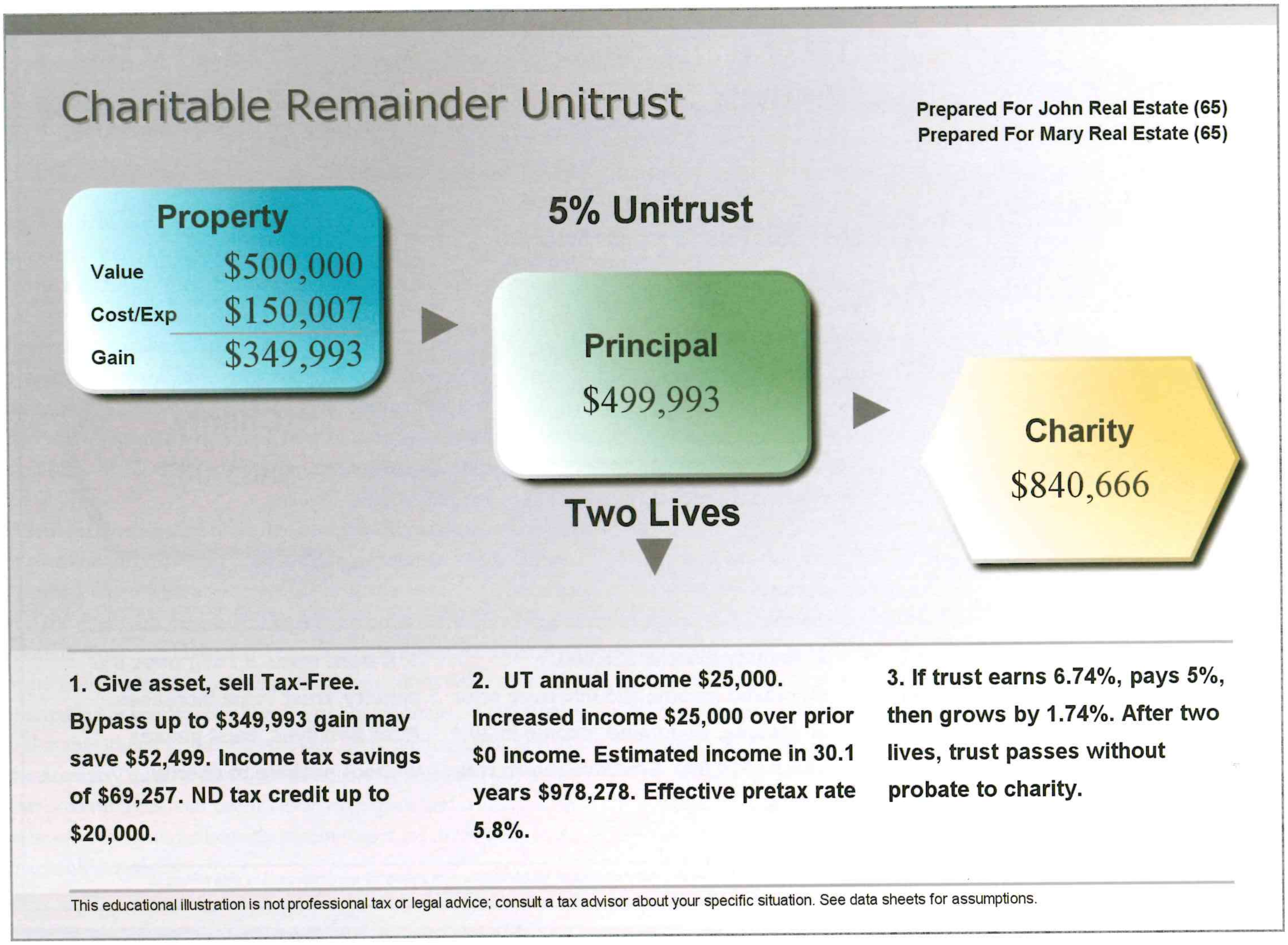
CRTs must pay a minimum of five percent (or net income) to the income beneficiaries annually. In the case of a CR Annuity Trust (CRAT), this amount remains the same for the life of the trust (either the life of the income beneficiary or a set term of years). In the other structure, the CR UniTrust (CRUT), the percentage is fixed but re-calculated annually based on the market value of the investments in the trust. If the value of the assets go up, the payment goes up; if they go the other direction, the payment is reduced.

Already, we can see some reasons for the two types of CRTs, a client/donor who values certainty (often an older donor) and who funds a CRT with assets that will probably not vary greatly in value is a better fit for the CRAT, as they will receive a fixed payment for the term of the CRAT. A client/donor with assets not easily valued at time of transfer and who is more willing to "bet" on good future returns might be a better fit for the CRUT, as their income might increase over the life of the CRUT. As we go through the process of explaining these vehicles to your clients, we ask for a lot of information. This conversation reveals many things, including which planned gift might work best for them and their particular situation.

Above we see a CRAT illustration for a 75-year-old couple who have a second house (on the lake or in a warm climate) in another state. The couple is charitably inclined and would like to divest themselves of the asset, maintain a lifetime income, and eventually benefit their favorite charity.

As with any illustration, some assumptions were made as to investment return, etc., but these numbers will suffice for our purposes. The numbers chosen would represent a property bought years ago and held onto for the couple's use and, having reached a point where they no longer travel to that destination, they have been renting it out as an Airbnb.

The asset is transferred to the new owner, the CRAT. This triggers the tax benefits as listed in the illustration, which will substantially reduce the couple's tax burden. The new owner (trustee) can sell the asset, re-invest the entire proceeds, and then distribute the income to the couple during their lifetimes in a fixed payment that the couple can rely on for their cash flow. This will spread out the capital gains tax and, if the investments work out as assumed, the couple will leave a substantial legacy for their favorite charitable purpose.



By using a CRUT, we can better serve a younger couple in a similar circumstance, as outlined above.

As you can see from the illustration, with a successful CRUT, the income for a younger donor can increase over time, allowing the income stream to perhaps keep pace with inflation so the buying power of the income stream is not diminished by inflation. Another useful characteristic of a CRUT is it can be added to over time without the need to create a new trust. So, with the CRUT, your client can "add" assets to the CRUT, which allows them to take the additional tax benefits and increase their income from the CRUT very simply. This can be a wonderful way for your clients to build a substantial charitable legacy in a tax-wise manner.

A charitable lead trust (CLT) turns this entire equation on its head in that the income stream goes to charity over the term of the trust and the remainder reverts to the donor or the donor's designated beneficiaries. This tool is used when a client wishes to pass a rapidly appreciating asset to the next generation by locking in the present value for estate and transfer tax purposes. The charity receives the income stream, the trust or the grantor receive a charitable deduction for the income stream to charity, and the asset eventually reverts to a noncharitable beneficiary. You may be able to see why the CLT is much less common than the CRT, but it can be very useful in special circumstances.

We have reviewed the basics of the major planned gifts that can be used to help your clients to build a charitable legacy and utilize the generous tax benefits available on the federal and local level. By working with a qualified planned giving officer as part of the process, you can ensure you are meeting your client's charitable and financial goals as well as helping with important community needs. The illustrations in this article are from Crescendo CRESPRO software. If you have a client interested in exploring one of these types of gifts, most planned giving professionals will "run the numbers" in CRESPRO for you at no obligation.