

CHOOSING A TRUSTEE FOR YOUR CHARITABLE REMAINDER TRUST

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Donors planning to establish a charitable remainder trust should carefully consider their choice of trustee. The trustee has a number of important responsibilities, including ensuring that the donor's wishes as set forth in the trust agreement are fully carried out. The trustee must also make sure that the trust assets are invested properly and that all administrative duties are completed in a timely and accurate manner.

Many donors of charitable remainder trusts benefiting a particular charity choose to name the charity as trustee. In other cases, the donor may prefer to select a commercial trustee or to name himself or herself as trustee.

Responsibilities of the Trustee

Investment. When investing a charitable remainder trust, the trustee must adhere to the provisions of the trust agreement and applicable law, including, in most cases, the Prudent Investor Rule. The Prudent Investor Rule requires that the trustee:

- Treat income beneficiaries and the charity impartially;
- Properly diversify the trust assets;
- Balance risk and return in portfolio choices;
- Avoid unnecessary costs;
- Consider the potential impact of inflation on the beneficiaries; and
- Secure needed expertise if the trustee lacks it.

The trustee of a charitable remainder trust must also have specialized knowledge of the unique administrative and tax requirements of these trusts in order to invest them properly. For example, the trustee must understand four-tier tax accounting (unique to charitable remainder trusts) in order to improve, where possible, the tax character of the income paid to beneficiaries. Also, the trustee must avoid investing in any asset that

produces "unrelated business taxable income." This type of income can render the trust taxable during the year it is produced, which can have negative tax implications for the donor and the trust.

Administration. The trustee of a charitable remainder trust must also carefully adhere to the requirements of the trust agreement and state and federal law in the administration of the trust. The trustee must:

- Receive and account for the trust's initial funding and any subsequent additions to the trust;
- Account for all income and expenses of the trust;
- Maintain and update records regarding all trust beneficiaries;
- Annually determine the amount of beneficiary payments and ensure that all required beneficiary distributions are made on a timely basis;
- Prepare required tax returns for the trust, including tax information (K-1 forms) for income beneficiaries;
- Report to the beneficiaries of the trust regarding its management; and
- Distribute the trust assets to the charity upon termination of the trust.

In addition to possessing the necessary technical knowledge and expertise, the trustee's staff should be readily available to answer beneficiary questions about the management of the trust.

Why a Donor Should Consider Naming a Charity as Trustee?

Many donors want the trustee of their charitable remainder trust to be someone who will remain dedicated to the management of the trust throughout its term. As the ultimate beneficiary, the remainderman charity is committed to ensuring the proper management of each trust for which it serves as trustee, including maintaining close communication with all beneficiaries. Ongoing oversight of the management of each trust is usually provided by the Investment Committee of the Board of Trustees of the charity, in addition to the Treasury and Development offices. In order to properly fulfill their responsibilities as trustees, many leading charities have engaged the services of

KASPICK & COMPANY, the country's leading provider of investment management and administration services for planned gifts. KASPICK & COMPANY's state-of-the-art services include diversified trust investment portfolios, electronic deposit of beneficiary payments, timely preparation of tax information, and beneficiary reports that have been developed specifically for charitable remainder trusts. For more information on KASPICK & COMPANY, including its investment approach and staff, please visit www.kaspick.com.

Charities that have partnered with KASPICK & COMPANY are generally able to offer a lower minimum funding amount for establishing a trust than what most commercial trustees would require. Also, the fees charged to trusts for KASPICK & COMPANY's investment management and trust administration services are generally less than those an individual donor would pay to a commercial trustee.

Each charitable remainder trust managed by the charity represents a gift that will ultimately benefit its mission. Staff at the charity work closely with each donor to coordinate the provisions of the trust to ensure that the trust meets the donor's intent.

Other Trustee Alternatives

In some cases, the remainderman charity may not be the best choice for trustee. The donor may wish to:

- Retain control over the investment and/or administration of the trust;
- Retain the right to change the ultimate charitable beneficiary of the trust;
- Have an independent trustee, (i.e., one who is not also a beneficiary of the trust); or
- Not tell the charity with the remainder interest about the existence of the trust.

Also, depending upon the trust terms and the asset(s) that will be used to fund the trust, occasionally the charity will decline to serve as trustee of a trust. In these situations, the donor may choose to be his or her own trustee or may decide to select a commercial trustee.

In considering alternative choices for the trustee, the donor should keep in mind the requirements and responsibilities of a trustee outlined above. If the donor plans to serve as the trustee, he or she may wish

to engage professional expertise in the form of a co-trustee or agent to assist in carrying out these duties.

If the donor is considering a commercial trustee to serve as the sole trustee or as a co-trustee with the donor, he or she should ensure that the organization has significant experience managing charitable remainder trusts. These trusts have requirements that are very different from the personal trusts that many commercial trustees normally manage.

Donors should also carefully examine the proposed investment approach and the fee proposals of commercial trustees. In some cases, the investment portfolios used by commercial trustees are not well-diversified, and are limited to one or two proprietary funds offered by the trustee. Fee rates charged today by commercial trustees vary widely. To properly compare fee proposals, the donor needs to identify all fees and expenses that will be charged to the trust. For example, some organizations charge a fairly low base fee, but then charge additional fees for administrative duties such as tax return preparation and issuing checks. Others invest trusts in proprietary mutual funds that carry high expense ratios.

Summary

Donors who are considering establishing a charitable remainder trust should give careful consideration to the selection of the trustee. The trustee has important legal responsibilities that may extend beyond the donor's life. Through their affiliation with KASPICK & COMPANY, our client charities are able to provide high quality investment management, administration, and reporting for each of their trusts. ■

