When A Donor Walks Away From A Gift (And The Charity Benefits!)

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Have you ever hoped that a donor would walk away from a gift? Why would any gift officer want that, unless perhaps the charity was at some risk of liability as a result of accepting the gift? Your goal is to close gifts – to cultivate and engage the donor with the hope of a (big) gift.

There is one scenario, however, where a charity benefits from a donor walking away from the gift. Consider a retained life estate. The donor makes a gift to charity of a personal residence, vacation home, or farm, but retains the right to use the property, usually for life. The donor gets an immediate income tax charitable deduction for the remainder value of the home to charity. The donor and charity enter into a written agreement detailing their respective financial obligations. The donor will customarily be responsible for payment of all taxes, insurance, maintenance, and improvements. The charity will attempt to limit its financial and maintenance obligations. Unlike life income gifts where the assets are liquid and the charity has total control, with a retained life estate the charity owns the property long-term and is subject to liability for occurrences at the property, but has virtually no control due to the life estate held by the donor.

What happens when a donor who is occupying a property under a retained life estate no longer wishes to continue living in the property?

In 2006, when Bob and Sandy were each 75, they made a gift to their alma mater of their personal residence on 10 acres. The property was valued at $750,000, and Bob and Sandy received an immediate income tax charitable deduction of $295,297. They continued to live there until Bob's death in 2016, at which time Sandy preferred to move closer to their children. In consultation with the Gift Planning office at their alma mater, Sandy, now 85, agreed to surrender her life interest and make a gift of the remaining interest to the college. She obtained a qualified appraisal so that she could deduct the value of her life interest, per IRS regulations. The property was valued at $925,000, and Sandy received an additional income tax charitable deduction of

$148,735. Sandy effectively walked away from the gift and the college sold the property, which was good for the college.

Then there was Edith, who had made a gift of her vacation cottage in the mountains to her church, retaining the right to use the cottage for her lifetime. As Edith aged and required more assistance she wanted to enter a life care community, but lacked the financial resources. Edith met with the development director at her church. The development director suggested that the cottage be sold and the proceeds divided in proportion to their respective interests in the property. Edith gladly agreed. The net proceeds from the sale were $320,000. Edith, now 82, received a check for $73,971, representing the value of her remaining life interest. Her church received a check for $246,029, the value of its interest in the property. Edith will need to consult her tax advisor for the tax ramifications of this transaction. Edith walked away from her gift with a much-needed check in her pocket. Her church received the financial benefit of her gift earlier than expected, which was good for the church.

Jennifer and spouse Bill made a gift of their condo in Aspen, retaining a life estate so they could continue using the condo for family ski vacations. Their gift was to a hospital where Jennifer had practiced medicine for many years. Being somewhat bored in retirement, Jennifer and Bill decided to follow their daughter and her family to Europe when their daughter accepted a teaching position there. Jennifer and Bill knew they would return to Aspen someday, they just didn't know when. After consulting with the Planned Giving office at the hospital that owned the condo, Jennifer and Bill decided to rent the condo, which is permitted under IRS regulations and by the agreement Jennifer and Bill had signed with the hospital when they made the gift. The rental income will belong to Jennifer and Bill. In essence, Jennifer and Bill walked away from their gift, just not permanently.

As with most planned gifts, there are often options to restructure the gift after the gift takes place. Sometimes when the donor walks away from the gift, the charity walks to its bank a little faster.