STARTING A CHARITABLE FOUNDATION FUND USING THE COMMUNITY FOUNDATION OPTION

2014 ANNUAL MINNESOTA PLANNED GIVING CONFERENCE
TUESDAY, NOVEMBER 4, 2014 – SAINT PAUL, MN

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"There are people who contrive to perform the only uncharacteristic act of their lives after they are dead," begins the "Lillian Gish's Largesse" story in Talk of the Town, The New Yorker, August 15, 1994. The story quotes a section of the late actress' will:

> I have devoted my entire career to the performing arts. As an actress in films and on the stage and as a writer and lecturer on the subject of films, it has been my desire to contribute, through the performing arts, to the beauty of the world and to mankind's enjoyment and understanding of life.
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> In order to carry out my purposes, I direct my Trustees to hold my residuary estate in trust and pay the net income therefrom, for each taxable year of the trust in one sum to the person chosen by the Prize Committee, which shall be established as hereinafter provided, to the recipient of "THE DOROTHY AND LILLIAN GISH PRIZE." … The recipient should by excelling in his or her field have served as a model and encouragement to all others who would follow in his or her path. It is my desire, by establishing this prize, to give the recipients of the prize the recognition they deserve, to bring attention to their contributions to society and to encourage others to follow in their path.

SCOPE OF THIS ARTICLE

The creation and use of a foundation to perform philanthropy and to give a type of immortality to the estate planning client is the topic of this article. The focus is in the use of the "community foundation option" instead of the private charitable foundation, because of the simplicity of the option and the requirements of Internal Revenue Code Section 509, which was enacted to curb perceived abuses in private foundations.

This article is intended to assist the general estate planning lawyer in deciding whether the community foundation option is suitable for estate planning clients who wish to create a testamentary foundation. The article presents various nontechnical issues, a detailed hypothetical case, and an approach to creating a practical and economically sound estate plan for the client who desires to refrain from making lifetime transfers to charity but who wishes to plan for a final charitable gift – the transfer of property at death to a charitable foundation.

HISTORICAL BACKGROUND

The term "charitable foundation" does not have a precise meaning, yet the application of the tax code to charitable foundations is quite specific. Charitable organizations have been tax exempt since 1917.

Prior to 1969, an individual forming a foundation, organized and operated exclusively for charitable purposes, could obtain a charitable tax deduction for making gifts to it, and could control the private foundation with few restrictions and rules beyond the requirement of filing an annual tax return. Furthermore, the donor could continue to operate the business given to the foundation and make no current charitable grants but instead build up an endowment which only later would provide funding out of investment income to other charities that provided direct services.

After several congressional investigations and a 1965 Treasury Department report[1] documenting problems with private foundations, the 1969 Tax Reform Act for the first time defined a "private foundation" by distinguishing it from a public charity or foundation. Instead of defining what a private foundation is, Section 509 of the Internal Revenue Code defines what a private foundation is not.

Section 501(c)(3) of the Internal Revenue Code defines as tax exempt all organizations which are "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes." Organizations obtain classification as 501(c)(3) tax-exempt by applying for and obtaining a determination letter from the Internal Revenue Service. Successful applicants are exempt from federal income tax, and donations to them are tax deductible as charitable contributions.[2]

Each 501(c)(3) organization is a private foundation, unless it can show to the IRS that it qualifies as a public charity under at least one of four exceptions.[3] The public charity exceptions, in order of importance, are organizations that are classified as:

1) Traditional public charities under IRC Section 509(a)(1) – also known as IRC Section 170(b)(1)(A) groups, such as churches, schools, hospitals, and publicly supported organizations, including community foundations;

[1] "U.S. Treasury Department Report on Private Foundations," Washington: U.S. Government Printing Office, 1965.
[2] Internal Revenue Code §§ 501(a) and 170(b)(1)(A).
[3] Internal Revenue Code § 509(a).

2) Meeting gross receipts tests under IRC Section 509(a)(2) – which must be publicly supported;
3) Supporting organizations under IRC Section 509(a)(3) – not publicly supported, but controlled and closely associated with another public charity; and
4) Operated exclusively for testing for public safety under IRC Section 509(a)(4).

Those organizations that do not fit into an exception are private foundations. The term "private charitable foundation" usually refers to an organization that has three features: (1) there is one source of funds, typically a person or family; (2) the organization does not do direct acts of charity, i.e. it is not an operating foundation; and (3) the funds for necessary administrative expenses and for the gifts given to charities come from endowment income. Private foundations are subject to more extensive regulation, reporting requirements, and other restrictions (paying an excise tax, making a minimum payout, not self-dealing, not owning a business, not making jeopardy investments, not lobbying).

THE COMMUNITY FOUNDATION

The first community foundation was founded in Cleveland in 1914.[4] Community foundations are almost always classified as traditional charities under IRC Section 509(a)(1), with the tax advantages of being publicly supported organizations. Community foundations "develop, receive and administer endowment funds from private sources and manage them under community control for charitable purposes primarily focused on local needs."[5]

The purposes of most community foundations, in part, are to receive and act as a vehicle for property left in perpetuity to the foundation by individuals, and to distribute funds (usually endowment earnings under some spending policy) to charitable agencies and fields of interest designated by the donors.

Community foundations normally limit their philanthropy to charitable or tax-exempt organizations within a specifically identified region or local community. They may be organized as trusts or nonprofit corporations.

According to Treasury regulations, the governing body of the community foundation must be structured and be given power to meet three requirements:

1. It must represent broad interests of the public and not private interests of a limited number of donors.
2. All combined or pooled funds and their component parts must be subject to a common body or distribution committee that alone directs or monitors (in the case of a fund designated for a specific beneficiary) the distribution of all funds for charitable purposes.

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[4] The Cleveland Foundation, http://www.clevelandfoundation.org/about/history/ (Mar. 2014).
[5] Grantmakers in Health, http://www.gih.org/general.cfm?ItemNumber=4347 (Mar. 2014).

3. It must have a "variance power" under which it can (alone or with court approval) "modify any restriction or condition on the distribution of funds for any specified charitable purpose or to specified organizations if in its sole judgment… such restrictions or conditions become, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served."[6]

Community foundation funds are generally classified into four categories: unrestricted funds, designated funds, donor advised funds, and field-of-interest funds. Upon the transfer of the asset to be held as an endowment, in all but the unrestricted funds, the donor or the instrument of transfer may specifically name or broadly identify the charitable concern to receive the benefit of the fund.

Reserved in the transfer to donor advised funds are the rights from time to time to recommend grants; however, the ultimate power to make all grants must be in the governing body of the community foundation. The use of donor advised funds is discussed in more detail in the next section.

Typically, a community foundation can support a staff, take advantage of economies of scale, provide professional expertise, comply with complex documentation and filing requirements, provide investment and fiscal management, undertake certified audits, and obtain liability protection rarely available otherwise to small private foundations.

Lastly, the name given to the endowment or fund established with the community foundation provides an opportunity to either memorialize an individual or give a family name permanence in the community.

THE DONOR ADVISED FUND

A donor advised fund in a community foundation may be an appropriate alternative that is preferable to establishing and maintaining a private foundation. This alternative may very well serve to meet the donor's charitable intent, desire to delay detailed decisions while getting charitable affairs in order, and goal of avoiding taxes so that more money remains for local community needs.

A donor advised fund is an unrestricted component fund of a community foundation. The governing body of the community foundation (single entity) is required to have the final authority to determine the use and distribution from the fund.[7] The donor or persons designated by the donor, for a time, exercises the privilege of making non-binding recommendations suggesting which charitable projects or organizations should receive grants from the separate (component) fund.

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[6] U.S. Treasury Regulation § 1.170A-9(e)(11)(v)(B).
[7] U.S. Treasury Regulation § 1.170A-9(e)(11)(ii).

Community foundations structure and operate donor advised funds in a wide variety of ways. Therefore, the applicable forms and procedures for designing, establishing, and operating such programs differ significantly. Although current tax laws authorize and encourage donor advised funds, there is no single way to fit within the confines of the legal requirements. The laws applicable to donor advised funds have become more precise in recent years. However, there still remains a good deal of flexibility and variety in the use of donor advised funds.

Section 4966(d)(2) of the Internal Revenue Code defines donor advised fund as a fund or account— (i) which is separately identified by reference to contributions of a donor or donors, (ii) which is owned and controlled by a sponsoring organization, and (iii) with respect to which a donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor.

Before this definition became part of the Code, the term "donor advised fund" was not found in the Internal Revenue Code or in the regulations. Treasury Regulations Section 1.507-2, defining what is permissible when a private foundation is terminated, was the go-to source for analyzing donor advised fund situations. Section 1.507-2 seeks to prevent the private foundation and its founder from continuing to exercise control over assets turned over to a community foundation.

The Treasury regulations are fact-and-circumstances tests to determine compliance with or violation of the regulation that a fund (however created) may not, directly or indirectly, be subject to any "material restriction" or condition if it is to be treated as a component part of a community foundation. The guidelines in the regulations are in two parts: (1) factors that tend to indicate there is not retained an indirect right to control distributions,[8] and (2) factors that indicate that there is retained control over the donor advised funds.[9]

Community foundations' investment policies and methods vary, but most employ money managers to handle the daily investment duties. If the donor retains investment control, such action will be considered a material restriction so as to disqualify the fund as a component fund.

Whether a donor advised fund is subject to a material restriction or whether a donor controls his or her fund is a subjective determination given the aforementioned factors and the fact that no single factor on its own necessarily protects or invalidates a donor advised fund program.

Related to control is the issue of donor benefit. Distributions must not be made from a donor advised fund to discharge or satisfy a pledge or obligation of any person, charitable or

[8] U.S. Treasury Regulation § 1.507-2(a)(7)(iii).
[9] U.S. Treasury Regulation § 1.507-2(a)(7)(iv).

otherwise. Distributions must not confer a tangible benefit or privilege upon the donor or any other person.

The tax laws clearly prevent a donor (or persons designated by the donor) from abusing the donor advised fund by setting up what in effect would be a private foundation within a community foundation, directed by the donor while avoiding restrictions on private foundations. The donor may set forth general provisions about the overall purpose of the fund created, while still being very specific about matters of importance to him or her. For example, the donor may specify desired characteristics of grant recipients or requirements for the use of funds in the local community.

A donor, or the donor's advisors, may refer organizations and individuals seeking charitable requests to the donor advised fund. Such requests will be evaluated by the community foundation in a manner whereby the donor may enjoy many of the satisfactions of guiding the use of the distributions from the donor advised fund.

Importantly, the donor can significantly influence, through the power of persuasion, the distribution decisions of the community foundation. It is understandable why so many variations exist in how donor advised funds operate and why such funds are a highly flexible charitable planning technique.

HYPOTHETICAL

To illustrate many of the issues raised by the use of the "community foundation option" and the context in which they arise, consider the following hypothetical.

Ole Olson, a crusty Norwegian bachelor farmer has just left your office. Ole is the last of the Olsons left on the old home place in Spring Valley Township. While Ole and his brother, Per, had not come over on the boat from Norway in the 1870s with their folks, you would have been fooled into thinking so by talking to them. Ole had lived the entire Twentieth Century, but little did it show.

Anna Olson, their sister, stayed home just as they had. She had been a country school teacher, and after the old folks died, she kept house for Ole and Per.

The Reverend Carl Olson, their youngest brother, was a Lutheran minister with a grown family who recently retired in Minneapolis. In Anna's 1995 will, she disinherited Carl over a theological argument she felt she had lost when Carl became ordained.

Upon Anna's death, her entire probate estate (over $400,000) was left to Ole and Per.

The former senior partner in your law firm had done some estate planning for Ole and Per when he probated Anna's estate. He put ownership of all their assets in joint tenancy between them.

The day of Per's death, Ole stopped by your office to confirm his understanding that he would "get the farm and the money in the bank" as the surviving joint tenant. He also made an appointment to see you after the funeral.

Today, Ole met with you to ask what he needed to do so that the quarter section, the eighty acres, and the six certificates of deposit in the six different banks would be, in his words: "left to do some good in the world."

Ole also told you that he thought that Carl might need some money, but that Carl had for too long expected he would get rich when they died. Ole did not want to have any estate taxes paid; he thought such taxes were a waste of good money.

Ole seemingly resisted your repeated attempts to get answers to questions, but said he "couldn't give it all to the church, seeing as how they fought" over the use of a small bequest once. Ole rambled on about how the Spring Valley Lutheran Church congregation had either moved out, died, or gotten too old to get out to attend services.

Ole was getting up to leave your office and end the conference on the topic of poor church attendance, having in his mind told you all about his estate planning goal, when he said: "They shouldn't sell the farm, they should keep the renter and let him pay cheap rent. He's pretty good, don't you know."

You give Ole an appointment for next Wednesday, and tell him you will have a rough draft of a will for him to review.

THE NEED FOR AN APPROACH

The lawyer's presentation will have a significant impact on whether the client pursues the community foundation option or opts for something else. The general estate planning lawyer should be able to assist a client in evaluating the usefulness of the community foundation option for carrying out charitable goals. The use of the community foundation option usually raises more issues than the more traditional method of using specific charitable bequests in estate planning.

Its use requires teamwork with an appropriate and willing community foundation, and perhaps one operating in a specific geographic area. The use of the option may solve the need to quickly put a charitable plan in place, while deferring actual grants. Particularly, in situations where the donor is uncertain about the ability of a particular charity to manage the use of a large endowment, the donor advised fund option permits a wait-and-see approach to funding.

Ethical Considerations. In designing an approach to present the community foundation option, it is necessary to consider ethical concerns. If the lawyer, after assessing time resources, ability and experience, doubts his or her ability to carry out the task, the lawyer's ethical duty (after obtaining the client's consent) is to associate or decline the engagement. The hypothetical client may enjoy a "smorgasbord", but not of the type where the lawyer thinks it is his or her ethical duty to advise the client of all possible alternatives.

The lawyer should find out from the client what they hope to achieve, consider alternatives and evaluate the advantages and disadvantages of the options with the client. Some of the analysis can be done by the lawyer without the active involvement of the client.

The lawyer needs to ask: To what extent must a variety of estate planning options be explained before the client can make an informed consent? All things considered, the lawyer must be sure of the limits of how much and how far the client should be led. A lawyer has a special duty toward clients who are poorly educated or ill-informed.

Fiduciary and Foundation Selection. Anticipate being asked by the client about fiduciary selection. In the hypothetical, the client may consider his brother, his tenant, his minister, or you to be a fiduciary. Likewise, be prepared to be asked to recommend a community foundation to work with and through to structure a program. Usually, the lawyer will be more knowledgeable about the choices of community foundations than the client. Suggesting or helping to evaluate and choose the appropriate community foundation presents many of the same types of problems and issues for the lawyer as when the client seeks assistance in the selection of a broker, lender, insurance agent, appraiser, trust company, etc. The importance of the right choice is greater, however, since it is irrevocable and often the results will not be known until after the client's death.

Client Motivation. If the client is apparently motivated by spitefulness to choose a charity over the ethical claims of family, the lawyer may wish to confront the client about motive. On the other hand, if the client's motivation is glorification of self or satisfaction of vanity, it might be best not to discuss motives. In some states, close relatives are protected against excess generosity to charity and so-called "mortmain acts" may void gifts to charity made a certain length of time before death.

The client with a charitable intent is not apt to be like Miss Lillian Gish, above, who "drew up a will that is almost twenty pages long and is notable for the clarity with which it expressed her intentions,"[10] nor is the client likely to be as uncommunicative as the one in the hypothetical.

[10] Brendan Gill, The Talk of the Town, "Lillian Gish's Largesse," The New Yorker, August 15, 1994.

DESIGN OF THE PLAN

The first step in the design of the estate plan is to ensure that it is not only compatible with the client's goals, but that it meets expectations and can be made understandable to the client.

Choosing a Foundation. Equally important as a first step is the early contact with an appropriate community foundation. The community foundation should have goals and purposes consistent with those programs, activities, or organizations the donor will want funded. The experience, abilities, investment performance, and reputation of the organization are factors to be evaluated and references should be made available.

For lawyers practicing in those states where there exist state-wide foundations (Minnesota, Oregon, Texas, North Dakota, Rhode Island, North Carolina, and perhaps others), the search is simplified. However, even in those states, the lawyer may wish to investigate smaller regional community foundations. Where the testamentary gift is not large or the asset to be transferred is unique, the smaller community foundation may be more flexible. The staff of a smaller regional community foundation may also seem to be more helpful due to the desire to attract the gift.

The planned giving specialist at the foundation will often offer to meet with the client. At the early phase of estate plan design, the lawyer would be well advised to keep the client anonymous even though the client has consented to disclosure. The lawyer should obtain enough information to ascertain whether the community foundation being "interviewed" will be able to fulfill the client's charitable intention. The community foundation must have the ability and willingness to accommodate the client's specific goals.

Foundation Policies. Each community foundation will have policies concerning acceptable activities for donor advised funds. Expect to find operational policies as to the conditions and procedures under which non-cash donations of property will be accepted and managed.

Administrative Fees. Each donor advised fund will likely pay an administrative fee, which covers administrative work by the community foundation, investment fees, and other direct costs attributable to the activities of the fund. Inquiry should be made as to the anticipated fees that will need to be paid.

Restrictions. Expect the community foundation to have minimum size requirements for establishing a permanent fund. Many foundations also set a minimum distribution amount for each grant made from a donor advised fund, due to the cost of grant review, independent investigation, and processing of distributions.

Operational Issues. Other operational issues to clarify are whether advisors choose their successors, and how long advising will last. Also, answers are needed concerning the use

of funds when either no advice is given or the advising period ends. Some community foundations make distributions from corpus; others do not.

Traditionally, the community foundation will sell contributed non-cash assets, invest the proceeds, and make grants of the earnings available for distribution to 501(c)(3) nonprofit organizations. In the case of scholarship funds, the grants may go to individuals.

It is customary for the community foundation to prepare an agreement to set up the donor advised fund, or in some other manner document by way of a "prospectus" the component fund that will receive the donation. Having put in place the donor advised fund, the client needs only to make gifts, inter vivos or testamentary, to the community foundation designating the fund that has been set up. In the agreement, the community foundation normally makes clear that each donor advised fund is the property of the foundation, is subject to its control, and is subject to the referenced procedures "as amended from time to time by the governing body."

For the client's benefit, at a time before the client and community foundation have been introduced to each other, it is best to set forth the charitable goals in some detail. Identification of the specific charities or charitable causes, the types of scholarships, the possible or desirable allocations among causes, and the criteria for distribution of the earnings from the endowed funds should be set forth.

HYPOTHETICAL, continued

The client is expecting a rough draft of his will. The dispositive provision of the will might read: "I give, devise and bequeath all the rest, remainder and residue of my estate to the trustees of the Ole Olson Charitable Trust." A charitable trust document meeting the requirements for a private foundation would be prepared for consideration and review.[11]

Set forth separately could be a list of ideas to be considered by the client. The ideas for Ole Olson might be:

- *The building site and part of the home quarter section and all tangible personal property to brother, Carl Olson, if he survives;*
- *A specified sum to each niece and nephew who survive;*
- *An amount to a scholarship fund to be named the "Anna Olson Scholarship Fund," with the earnings to pay for college for anyone from Spring Lake Township studying to be a school teacher;*
- *The eighty acres to be retained by trustees until current tenant quits, with the net cash rent to Spring Valley Lutheran Church, then upon sale of land…*

[11] For a testamentary charitable trust, see: Minnesota State Bar Association, Continuing Legal Education, Drafting Wills and Trust Agreements, Volume 2, Chapter 28, Section IV (6th ed.).

- The remainder of the land to be retained until the current tenant quits and eventually the proceeds from the sale of the farmland together with cash from bank accounts to fund an endowment, the earnings to be distributed annually, as follows: Percentages or fractions to schools, colleges, missions, units of government, hospitals, charities, social welfare programs, etc. Also, consider a portion to discretionary and unrestricted funds of a community foundation.

One of Ole's wishes, communicated during the first meeting, seemed difficult to achieve at first. He wanted his tenant to have cheap rent on the 80 acres that were to benefit his church. Requiring a charity to rent the land to a certain individual for less than market rate rent would result in a material restriction on the gift.

By giving the tenant a life estate on half the farm, Ole could effectively reduce the cost to half price for his tenant on that 80-acre parcel. Upon Ole's death, and so long as the tenant is living, the church would only get the rent from 40 acres, but it would eventually receive all the rent from that farm. The farm should be divided into two 40-acre tracts to achieve this goal, since the charity under consideration does not wish to hold undivided interests in farmland.

Because the tenant is 78 years old, you have done some analysis of the possible income tax benefits of a lifetime transfer of part of the eventual gift. Ole could retain a life estate on the 80 acres and grant the tenant a life estate on 40 acres, while presently transferring the remainder interest to the charity. If he might change his mind (something Ole never does), however, he should not give away these interests during his life. Forgoing an income tax deduction, Ole might prefer to use a transfer on death deed to transfer the tenant's life estate with remainder to the charity.

The separate sheet of suggestions, mentioned in the hypothetical, may appear to go beyond what a lawyer should do in identifying objects of the client's bounty, but it is meant to be only illustrative. The client may need to be given a starting point for defining more specific goals. In charitable giving, the client often does not know what can and cannot be done and how flexible a plan can be. Clients may even seek guidance by asking what others do regarding giving to charities.

Infrequently, a client will ask that the personal representative of their estate or trustees be the ones to select the charitable causes to be aided and leave them to the determination of the amounts to be given. In such cases, it is best to document in some manner the client's viewpoint on certain broad goals, such as whether the funds are to be distributed locally, or if there are specific or broad areas that they wish to avoid.

HYPOTHETICAL, continued

Ole is satisfied, actually pleased and delighted in a Scandinavian way, with what has been presented. He seems to really open up. He has not only identified fiduciaries that he wishes to name, but has made decisions on amounts he wants to give to nieces and nephews. In deciding between giving his brother, Carl, the forty acres with the building site or $500,000.00, he agrees with your suggestion that he should avoid giving the real estate improvements to the trustees and he decides that Carl should be given the home site with its small pasture and the creek running through it.

During this second meeting in the estate planning process, the special and unique goals of Ole Olson were identified. Ole sees that his hopes and plans can be implemented. A factor that was very important was the naming of the trust: "The Ole and Per Olson Charitable Foundation."

In visiting, Ole has told you that he has collected all of the writings of Thorstein Veblen, including a rare manuscript of The Theory of the Leisure Class. He offers to leave it to you in his will. You make a note that the collection should go to Saint Olaf or Carleton College; you will want to tell Ole why.

Only now, with certain knowledge that Ole can read and write, you decide to send him home with a seminar paper that you wrote about using community foundation donor advised funds. You also give him a packet of promotional materials and brochures from a Minnesota regional community foundation that is willing to accept gifts of farmland to be retained in donor advised funds.

Ole says he will study the issue of a private foundation versus the donor advised fund/community foundation option. In the meantime, he asks if you could have a will, charitable trust, durable power of attorney, and health care directive ready for him to sign next week. At 94 years of age, he thinks he had better get it signed.

IMPLEMENTATION

For clients who have decided that a donor advised fund at a community foundation has advantages over a private foundation, and who have selected the community foundation they wish to use, the implementation is easy. As one community foundation states in its literature: Establishing and then administering your foundation fund with us is a simple matter of signing a standard two-page agreement, pre-approved by the Internal Revenue Service; annual tax reporting, auditing, asset investment and other legal and financial requirements are all our responsibility.

The client's will would name the community foundation and identify the fund. Upon the death of the client, assets would be distributed to the community foundation to fund the

endowment. It would be then that the implementation of the client's plan would become a reality.

If the donor advised fund/community foundation option is not suitable or is otherwise rejected by the client, the provisions for supporting organizations in relation to community foundations may be considered as a method for avoiding the private foundation disadvantages. In many ways, this arrangement is beyond the scope of this article, but worthy of some explanation.

A supporting organization, described in IRC Section 509(a)(3), is a charitable organization maintaining a close and important relationship with a publicly-supported charity. A community foundation may be the supported organization. As in the case of publicly-supported community foundations, and contrary to the rules governing private foundations, the supporting organization does not have the requirements for annual minimum distributions, nor does it pay an excise tax on its investment income.

In matters of control, the donor surrenders the benefits of a private foundation. A majority of the governing body of the supporting organization would be appointed by the community foundation. The supporting organization makes grant decisions to fund agencies and programs which are consistent with the focus and limitations of the community foundation. The supporting organization's governing body is free to pursue its own interests or aims so long as they are within the broad field of those supported by the community foundation. Ratification by the community foundation is not required. The supporting organization, by agreement with the community foundation, would perhaps pay fees for investment services and contract for services with the community foundation.

CONCLUSION

The donor advised fund with a community foundation can be an extremely effective technique to carry out a client's estate planning goals and, at the same time, minimize the complexity of having a private foundation. However, the choice of a community foundation to work with and through will add an extra element for analysis. The donor advised fund should be carefully designed and crafted with the client and the community foundation.

There is loss of control inherent in the community foundation option, and the client may focus on that issue, in addition considering the program's advantages. A lawyer who follows the analysis and approach set forth in this article can assist clients in making the choice of whether to use a donor advised fund with a community foundation option.

POSTSCRIPT

Attributed to Yogi Bera is the famous quote, "When you come to a fork in the road – take it." Private charitable foundations are subject to many restrictions. Establishing a donor advised fund with a community foundation is an opportunity to avoid those restrictions.