Nevada Bankers Association
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Improving Your Odds: Selecting the Best Charitable Vehicles for Your Client's Goals

Discussion Problems

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Discussion Problem 1 – Family Involvement

Harry and Sally have a successful real estate development company and have amassed considerable wealth. They have three children and a number of grandchildren, all of whom have been adequately provided for through the excellent estate planning techniques you have put in place for them. Harry and Sally want to give back to the community. Specifically, they would like to use their nonbusiness assets to support the arts. A local arts council has been successful in developing a regional art museum as well as a theater company. However, the arts council's support varies and financial stability for its programs is uncertain. The arts council, and by extension the various local charities it funds, could benefit greatly from Harry's and Sally's support, but Harry and Sally are concerned that the arts council board lacks the resources and talent necessary to handle a significant gift.

Harry and Sally have asked you to present options to support the arts council in perpetuity without giving control of the assets directly to the arts council. Because their children and grandchildren all reside in the community and support the arts, Harry and Sally would be amenable to an arrangement that allows future generations of their family to be involved in continuing their philanthropic activities. Harry and Sally want to ensure that the funds are always used in their community and are used only to support the arts.

1. Can the objectives of Harry and Sally be met with a donor advised fund at the local community foundation?

2. If Harry and Sally wish to ensure the involvement of family in perpetuity, would a Type I supporting organization meet their objectives? What about a private foundation?

3. Can you accomplish Harry and Sally's goals without creating a new entity, but by re-organizing the arts council?

4. Would the conclusion be different if Harry and Sally would like for the charitable donee to employ one or more of their children?

Discussion Problem 2 – Funding with Closely Held Business Interests

When he was in his 30s, John Trucker founded a trucking business with his brother, Bob, who never married and has no children. Now in his early 60s, John's controlling interest in the trucking business is worth in excess of $400 million. Bob's minority interest is worth about $250 million. John has two sons and a daughter. One son is a lawyer and the other a neurosurgeon. His daughter, who is unmarried, has worked in the business with John for 10 years. John wants to leave half of his accumulated wealth to his family, but desires to devote the other half to charitable causes. John is not certain at this point whether his daughter will want to continue the business after John's death but does not want to curtail her options. He does want to treat his three children fairly even though two of them do not work in the business.

John is interested in undertaking lifetime charitable giving but anticipates that a substantial portion of his charitable giving will be testamentary. His children are close and all share John's desire to give back to the community. He is certain that his children would be able to work together on charitable giving after he is gone. John's brother, Bob, is close to all of John's children and also shares John's charitable objectives.

1. Would a private foundation be an appropriate vehicle for John's family to carry out their philanthropy? How would an anticipated sale of the business either during John's lifetime or at his death affect this analysis?

2. How could John and Bob coordinate their planning to achieve their overall goals?

3. If the business will not be sold, could a supporting organization or donor advised fund solve any problems associated with transferring shares of a closely-held business to a private foundation?

4. Are there any charitable vehicles that could enable John to achieve some tax benefits during his lifetime?

5. Would it be possible for charity to own 100% of the trucking business following the deaths of both John and Bob?

6. Could a 501(c)(4) organization play a role in this planning?

7. How are the answers to the above questions different if the siblings do not get along? What if the Bob and John do not get along?

Discussion Problem 3 – Charitable Activities

Steve and his wife, Mary, have been talking to their estate planning lawyer about establishing a private foundation. Steve retired at a young age after amassing considerable wealth from the sale of a leading technology company he founded after graduating from college. Steve and Mary now wish to turn their attention to philanthropy. Steve and Mary are strong proponents of education and relied on scholarships to support their studies. They would like to use their foundation to provide scholarships to deserving high school seniors who lack the financial means to attend college.

In addition, Steve and Mary understand that many private foundations make grants to other charitable organizations. While they would like to conduct some grantmaking through the foundation (particularly to satisfy pledges they have made to several universities), they would like to devote their attention to projects related to early education, such as the establishment of preschools in disadvantaged communities. They anticipate direct involvement in these projects and expect to hire staff to assist with the operation and management of these projects.

1. Given their desire to be directly involved in the charitable activities, what type of charitable vehicle would potentially best meet the objectives of Steve and Mary?

2. If Steve and Mary decide to use a private foundation, can the foundation carry on direct charitable activities?

3. What issues should be considered if Steve and Mary anticipate paying existing pledges made by them from the foundation?

4. Do the scholarships present any issues if the entity they establish is a private foundation or a supporting organization? What if the foundation is a private operating foundation? Could the scholarship program be handled through a donor advised fund established by Steve and Mary?

5. Steve's and Mary's experiences have given them strong views about the specific manner in which their philanthropy should be conducted. They are concerned about "mission drift" after they die. How can you address their concerns?

Steve and Mary accepted your advice and created a private operating foundation. Five years later, they tell you that they want to encourage (i.e., lobby) local governments to allow charter schools, invest significant sums in start-up Ed-tech companies, and otherwise support good social causes that you have told them do not qualify as 'charitable'. They have also been contributing significant amounts to their foundation and making other charitable contributions and have significant contribution carry-overs for income tax purposes. What other vehicles should they consider?