

# **Estate Planning and Charitable Giving: Three Real Life Case Studies**

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# CHARITABLE GIVING *and* ESTATE PLANNING

IOWA STATE UNIVERSITY FOUNDATION | AUGUST 31, 2016

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## *Mission of* GORDON FISCHER LAW FIRM

To promote and maximize charitable giving in Iowa

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## I Provide 5 Core Services

1. Wills, trusts, estates, and **estate planning**
2. **Training of nonprofit boards and staff** about charitable giving tools and techniques
3. **Employment law guidance** for nonprofits including advice about hiring and firing, and drafting of policies & procedures
4. Handling **compliance issues**, like starting a nonprofit
5. Working with nonprofit and donors on **complex gifts**

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## How To Get Today's Info.

In addition to the slides you've been provided, I also have an outline (PDF) .

### My outline is available in two ways:

- 1 Contact me, I'll be happy to mail or email the outline to you.  
(Email = [gordon@gordonfischerlawfirm.com](mailto:gordon@gordonfischerlawfirm.com), cell = 515-371-6077)
- 2 Visit: [gordonfischerlawfirm.com/GordonFischerOutline](http://gordonfischerlawfirm.com/GordonFischerOutline)

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# 6 Real-Life Case Studies

Starting with simple and become increasingly complex

## Ready?

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## Case Study #1

Tracy Smith is 57 years old, unmarried, no kids. Tracy received two degrees from ISU.

Tracy loves the Cyclones, loves her Church,  
and also a Hospital, which took great care of Tracy's nephew.

Tracy wants to know how to help these 3 nonprofits.



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## Case Study #1

While you actively listen . . . .

Tracy also mentions, "I always *meant* to get a Will done."

Tracy asks, "is that important?" Do I really need an 'estate plan'?"



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## Estate Planning?

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With the right professional:  
**Simple. Easy.**

*We need to demystify estate planning.*

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## What Do You Mean By An “Estate Plan,” Anyway?

An estate plan consists of legal documents  
to prepare for death or disability.

Yes, you need an estate plan.

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## 6 “Must Have” Estate Planning Documents

1. Estate planning questionnaire
2. Last Will and Testament
3. Health care power of attorney
4. Financial power of attorney
5. Instructions for the disposition of personal property
6. Final Disposition (*i.e. burial instructions*)

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## Where Can I Find An Estate Planning Questionnaire?

**GORDONFISCHERLAWFIRM.COM**

*Downloadable, fillable PDF.*

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## What Is A Will, Anyway?

*A will is a written document that*

1

and

2

Directs how your  
property will be  
distributed at death

States who will  
distribute your property

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## How Is A Will Different Than An Estate Plan?

A will is one document, albeit a critical one, in your entire estate plan.

An estate plan is a set of documents that includes your will and any additional documents created to prepare for your death or disability.

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## What Is A Health Care Power Of Attorney?

A health care power of attorney is a written legal document which designates someone, or more than one person, to make medical decisions for you if you cannot.

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## What Types Of Health Care Decisions Are Governed By A Power Of Attorney?

- Any kind of decision related to your health you allow.
- You could limit your representative to certain types of decisions or you could allow your representative to make any health care decision that might arise.

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## Does A Health Care Power Of Attorney Arise Just For End-of-life Decisions?

Contrary to popular belief, this power and authorization is more than just dealing with the “end-of-life” decision. It can be **ANY** health care decision.

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## What Is A Financial Power Of Attorney?

A financial power of attorney is a written document that designates someone to handle your financial decisions on your behalf.

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## What If I Don't Have A Financial Power Of Attorney?

If you do not have a power of attorney and you were to become incapacitated, any financial decisions would need to be made by a court-appointed conservator.

At a court's direction, the conservator would handle your financial assets.

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## After I Die, Can My Agent Still Use A Financial Power Of Attorney?

A common misperception -- your agent will be able to use the PoA after your death.

At your death, any power is automatically revoked and it will be necessary to switch management to the representative appointed through probate.

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## Can My Agent Mishandle Or Misuse A Financial Or Healthcare Power Of Attorney?

It's possible, so you should choose an agent with utmost care and make it someone in whom you have complete confidence.

Also, a well drafted power of attorney can be very clear about what powers an agent has (and doesn't have), and handle all potential contingencies.

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## 6 "Must Have" Estate Planning Documents

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## What Are Instructions For Distribution Of Personal Property?

On this form, you can designate specific items of your tangible personal property (e.g., “things,” or “stuff,” such as jewelry or a baseball card collection) to go to certain people after your death.

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## What Are “Final Disposition Instructions”?

- to specify how to deal with your remains;
- to provide details of any prior arrangements; and
- to designate person(s) to carry out your wishes.

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## OK, I Understand The 6 “Must Have” Estate Planning Documents. What Else?

*Don't forget about your beneficiary designations.*

With your savings and checking accounts;  
retirement benefit plans; mutual funds; insurance policies; etc.

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## OK, I Understand The 6 “Must Have” Estate Planning Documents. What Else?

You need to keep the documents  
**UPDATED.**

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## 6 “Must Have” Estate Planning Documents

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## Case Study #2

Pat owns shares of publicly traded stock with a fair market value of \$100,000.

*Assume:*

Pat bought the stock for \$20,000.

[basis]

**Pat's tax rate = 39.6%**

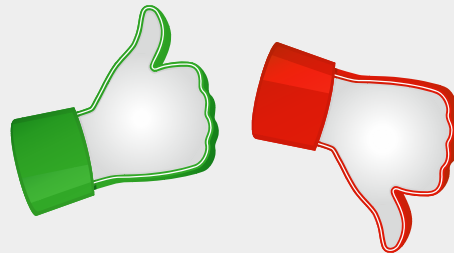
**Pat's capital gains rate = 20%**

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The threshold question:  
*charitable giving during lifetime versus charitable giving at death?*

**There are advantages and disadvantages to both.**



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## Charitable Giving During Lifetime?

- 1 More favorable tax consequences
- 2 Endow Iowa Tax Credit Program  
(Article at this link: [gordonfischerlawfirm.com/EndowIowa](http://gordonfischerlawfirm.com/EndowIowa))
- 3 Donor experiences the joy of giving.
- 4 “You should be giving while you’re living, so you’re knowing where it’s going.”

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## Disadvantage?

How much can you afford to give???

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## Which Would Be Better For Pat:

Sell the stock and donate the cash,

*OR*

Give the stock directly to her favorite charities?

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## Double Benefit From Gift Of Appreciated LTCG Property:

» Avoid capital gains tax

» Use charitable deduction

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DONATING CASH VERSUS DONATING REAL ESTATE	DONATING CASH PROCEEDS AFTER SALE OF LAND	DONATING FARMLAND
Value of gift	\$100,000	\$100,000
Federal income tax deduction	(\$39,600)	(\$39,600)
Capital gains tax savings	\$0	(\$16,000)
After Tax Cost of Gift	\$60,400	\$44,400

*Note: Above table is for illustrative purposes only. Only your own financial or tax advisor can advise in these matters.*

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## Endow Iowa

**25%**  
STATE TAX  
CREDIT

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## Endow Iowa

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### *3 Requirements:*

- 1** Held by community foundation
- 2** Iowa charitable causes
- 3** No more than 5% spending per year

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## Endow Iowa

Then donors can be eligible for:

**25%**  
STATE TAX  
CREDIT

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## Endow Iowa Caps

- Individual
  - \$300,000 per individual gift of \$1.2 million
  - \$600,000 per couple for gift of \$2.4 million
- Statewide
  - first-come, first-served until yearly appropriated limit
  - if all awarded, qualified donors first in line for eligibility for subsequent year

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### TRIPLE TAX BENEFIT AVAILABLE TO IOWA DONORS

Value of Gift	\$100,000
Endow Iowa Tax Credit	(\$25,000)
Federal income tax charitable deduction	(\$39,600)
Capital gains tax savings	(\$16,000)
<b>After Tax Cost of Gift</b>	<b>\$19,400</b>

*Note: Above table is for illustrative purposes only. Only your own financial or tax advisor can advise in these matters.*

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## Case Study #3

Sara is in her 30s, and is expecting her first child, a girl, next month.

Sara is a graduate of ISU and wants to help her alma mater.

Sara inherited a retirement benefit plan from her mother.

**What are Sara's options?**



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## Gifts At Death Via Beneficiary Designation

Donors considering leaving a charitable bequest may not realize they can also make a meaningful gift by naming Nonprofit as beneficiary of IRA, 401k, 403b, or other plan

This is simple and does not require drafting will or testamentary trusts.

Note: if account holder is married, spouse should be informed and may have to consent to gift.

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## IRA Charitable Rollover

Federal law allows donors over 70½ years to make direct distributions of up to \$100,000 per year to Nonprofit.

**Note:** This law applies only to traditional & Roth IRAS

**Note also:** Several other good options exist for charitable giving with retirement assets

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## What About Required Minimum Distributions (RMDs)?

Generally, an account holder must start taking required minimum distributions (RMDs) after age 70½.

This would seemingly be a good source for charitable gifts, subject to the potential obstacles just discussed above.

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## NON-RMDs

Individuals over 59½ may generally withdraw funds from retirement plans without penalty, make a gift with these funds, and then claim an offsetting deduction. In most cases, a gift made in this manner will be ***tax neutral***.

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## Loan from IRA to Nonprofit

An instance of the creative use of an IRA to benefit a Nonprofit is the CHIRA or Charitable IRA plan, discussed in PLR 200741016

(Google it... worth the read!)

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## Charitable Gifts of Retirement Plans

What is it? Advantages? Disadvantages?

**For more, go to:**

[gordonfischerlawfirm.com/RetirementPlan](http://gordonfischerlawfirm.com/RetirementPlan)

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## Case Study #4

Kelly is married, has 4 kids, and 6 grandchildren.

Kelly owns a second vacation home, a lake house in Okoboji.

Kelly used to visit the lake house frequently, but uses it less and less in recent years.

Kelly does note that one kid and two grandkids seem to enjoy the lake house.

Kelly wonders if the lake house could be gifted to ISUF at death through a will/trust.

**What are Kelly's options?**



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## Retained Life Estate

Donor irrevocably deeds personal residence (or farm) to Nonprofit, but retains right to live in it for term certain, such as the life or lives of individuals, term of years or combination of two.

At end of the measuring term, all rights to real estate are transferred to charity.

In this scenario, donor is called “life tenant,” has a “life use” of the farmland, and is transferring a “remainder interest” to charity, called “charitable remainderman.”

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## Life use

When a life estate is created, donor has life use of real estate for measuring term.

This means life tenant retains all rights and responsibilities of the real estate.

The life tenant has right, for example, rent out the real estate or earn income from crops.

The life tenant is also obligated to maintain the real estate.

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## Federal income tax charitable deduction

A current federal income tax deduction is permitted for present value of remainder interest.

As with all charitable contributions, the tax deduction for gifts involving appreciated property is limited to 30% of donor's AGI. Any unused portion can be carried over for up to 5 additional years.

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## Applicable Federal Rate (AFR)

The AFR in effect for the month of the life estate gift is used as the interest component for present value computation purposes.

At donor's election, AFR in effect for either of the two months preceding the life estate gift can be substituted. This is an obvious opportunity for good planning.

In short: lower the AFR, higher the charitable deduction.

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## Charitable Gifts of Life Estates

What is it? Advantages? Disadvantages?

**For more on life estates, go to:**

**[gordonfischerlawfirm.com/LifeEstate](http://gordonfischerlawfirm.com/LifeEstate)**

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## Case Study #5

Pat wants to help ISU Foundation.  
Pat just underwent a “liquidity event” and has some spare cash.

**Your advice?**



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# Charitable Gift Annuity

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# Charitable Remainder Trust

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## Articles on CGA's and CRT's

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**For more on CGAs, check out:**

[Gordonfischerlawfirm.com/CharitableGiftAnnuity](http://Gordonfischerlawfirm.com/CharitableGiftAnnuity)

**For more on CRTs, check out:**

[Gordonfischerlawfirm.com/CharitableRemainderTrust](http://Gordonfischerlawfirm.com/CharitableRemainderTrust)

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## CGA: What Is It?

Donor transfer asset(s) directly to Nonprofit, in exchange for the Nonprofit's agreement to pay an annuity to Donor for Donor's lifetime.

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## 3 Versions of CGA Agreements

- 1** A "single life" agreement  
*(annuity paid to only one person for her lifetime)*
- 2** A "two lives in succession" agreement  
*(annuity paid to A, and then if B survives A, paid to B)*
- 3** A "joint and survivor" agreement  
*(annuity paid to two persons simultaneously, and at death of first annuitant, survivor is paid full annuity amount).*

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## Types of CGA Agreements

- 1 Immediate Gift Annuity
- 2 Deferred Gift Annuity
- 3 Flexible Gift Annuity

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## Immediate Gift Annuity

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The annuitant(s) start(s) receiving payments at the start/end of the payment period immediately following the contribution.

Payments can be made monthly, quarterly, semi-annually, or annually.

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## Deferred Gift Annuity

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The annuitant(s) start(s) receiving payments at a future time, the date chosen by the donor, which must be more than one year after the date of the contribution.

As with immediate gift annuities, payments can be made monthly, quarterly, semi-annually, or annually.

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## Flexible Gift Annuity

*(Also known as a Deferred Payment Gift Annuity)*

Donor need not choose the payment starting date at the time of her contribution.

The annuitant (*who may or may not be the donor*) can choose the payment starting date based on her retirement date or other considerations.

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## Taxation of CGA Payouts

The annuity payments by the charity under a gift annuity are treated for income tax purposes as follows:

- 1 Tax-free return of principal
- 2 Long-term capital gain
- 3 Ordinary income

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## Testamentary Gift Annuity

If carefully planned, it is possible to arrange a CGA through a will.

The IRS approved a testamentary gift annuity in Ltr. Rul. 8506089.

It is of course crucial that both the bequest amount and annuity payout are made clear by the terms of the will.

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## Charitable Gift Annuity

What is it? Advantages? Disadvantages?

**For more on charitable gift annuities, go to:**

[gordonfischerlawfirm.com/CharitableGiftAnnuity](http://gordonfischerlawfirm.com/CharitableGiftAnnuity)

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## CRT: What Is It?

Donor transfers property to trust retaining an income interest for life or lives, with remainder passing to charity at the last beneficiary's death.

Donor receives an immediate income tax deduction for the actuarial value of the remainder.

The life beneficiaries may (but are not required to) include the donor.

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## Inter Vivos and Testamentary

A CRT can be established during the donor's lifetime or by operation of her will.

A CRT established during the donor's life is known as an *inter vivos transfer*.

A CRT established by the donor's will is known as a *testamentary transfer*.

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## Benefits of a CRT

**Flexibility.** Although Donor's transfer of property to the trust is irrevocable, a CRT provides for Donor the right to change charitable beneficiaries.

**Tax advantages.** Donor may receive a federal income tax charitable deduction for the value of the remainder interest in the year of the transfer.

Donor may transfer assets without recognition of capital gain tax.

There is no estate tax on the property passing to Nonprofit.

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## Types of CRTs

A CRT can be created as an annuity trust (CRAT), which pays a fixed amount each year to the noncharitable beneficiary.

Or, a CRT can be a unitrust (CRUT), which pays a percentage of the annually determined value of the trust assets.

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## Charitable Remainder Trust

What is it? Advantages? Disadvantages?

**For more on charitable remainder trusts, go to:**

**[gordonfischerlawfirm.com/CharitableRemainderTrust](http://gordonfischerlawfirm.com/CharitableRemainderTrust)**

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## Case Study #6

Pat owns an apple orchard.

Pat has been immeasurably helped by ISU.

Pat is wondering about charitable gifts from, or of, the apple orchard.

**What are Pat's options?**

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## Case Study #6

### A CHALLENGE!

Can you combine  
learnings from  
Case Studies 1, 2, 3, 4, and 5 ???

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## CRUT Variations

### Standard CRUT

The standard form of CRUT requires payment of the full stated percentage throughout the life of the trust, even if the assets must be liquidated.

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## CRUT Variations

### **Net-Income CRUT**

A CRUT may be drafted to pay out less than established percentage, if the trust income during the year is less than required payout percentage.

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## CRUT Variations

### **FLIP CRUT**

Under IRS regulations, a CRUT may begin as a net-income trust, and, at some pre-determined future date or triggering event, permanently convert (“flip”) to a standard unitrust.

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## CRUT Variations

### **FLIP CRUT**

A FLIP-CRUT is an attractive option for a donor seeking  
(A) a current income tax deduction;  
(B) tax-deferred buildup;  
and (C) increased income at a later date.

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**Please Ask Questions!**  
**Questions Are Encouraged.**



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