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Spirit Of Holiday Giving Can Infuse Your Estate Plan

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I write about charitable giving and estate planning ideas.

Stewardship and Charity: Charity, caring, giving, and helping others are all part of the holiday spirit. The holidays, perhaps particularly Christmas, are a time when people strive to be generous. Christians are encouraged to give generously and regularly. This is based on the concepts of stewardship. The concept of stewardship stems from a simple premise: "The earth is the Lord's, and everything in it." Psalms 24:1. Thus, we are not the owners of our wealth, but merely the stewards of it for the time we have. One biblical foundation for this is: "*17 You may say to yourself, "My power and the strength of my hands have produced this wealth for me." 18 But remember the Lord your God, for it is he who gives you the ability to produce wealth, and so confirms his covenant, which he swore to your ancestors, as it is today*." Deuteronomy 8:17-18.

Charity, Helping, and Kindness are Universal: Christians have received riches of God's grace, and are to respond with generosity and giving. Christians are called to a life of service, sharing, and stewardship. Christians, like those of other faiths, have an obligation to do good. Jewish concepts of charity or "Tzedaka," and repairing the world, "Tikun Olam," are similar. For Baha'i, charity is pleasing and praiseworthy in the sight of God and is regarded as a prince among goodly deeds. – Baha'u'llah, Tablets of Baha'u'llah, p. 71. For Latter-day Saints, tithing is a natural and integral component of LDS religious beliefs. Islam promotes the virtues of charitable giving. The Quran

says, "…when other relations and orphans and the poor are present at the division of the heritage, give them something therefrom and speak to them words of kindness…" (Ch 4:8).) The Buddha emphasized that one should not turn away from suffering but do whatever can be done to relieve it. But charity should be given selflessly, without expectation of reward or praise.

"Helping" certainly equates to charity and kindness. And all of these are universal concepts.

Charity and Kindness Should Extend Beyond Holidays: Regardless of your faith, or no faith, generosity, charity, and helping others are laudable values. These wonderous ideals should not be limited to a donation during a holiday but made a permanent part of your lifestyle and that of your heirs. One way to do just that is to integrate these values into your estate plan. There is a myriad of ways to accomplish this, and options exist regardless of your wealth level. While so many discussions about charitable giving, and particularly as part of an estate plan, focus on securing tax benefits, the discussion following will take a look at some of the human aspects of charitable planning. Charity will be defined broadly in terms of not only facilitating heirs giving money, but encouraging and enabling heirs to volunteer and make a contribution to society, or just "doing good."

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Charity is not Only About Money: A wonderful quote about giving is attributed to Mother Teresa who said: "It is Christmas every time you let God love others through you…yes, it is Christmas every time you smile at your brother and offer him your hand." This is particularly apropos to our discussion since giving back and helping others need not only be about money.

It certainly can encompass donations big and small, but also formal volunteerism, a lifestyle of helping in informal ways, even your investment decisions. And all of this can be integrated into your estate plan.

Integrate These Values in Your Estate Plan: Regardless of your faith, or not, you can foster these types of values in your estate plan, thus making them a permanent part of your legacy and encouraging heirs for generations to come to be charitable, volunteer, and more.

Give Trustees Guidance and Make Distributions Discretionary: Giving the trustee broad discretion on when to make distributions, or not, can create the flexibility to make distributions to enable a beneficiary to fund charitable gifts, or to pursue lifestyle decisions that can foster volunteerism and other noble acts. Consider including in the trust instrument precatory non-binding language that encourages the trustee to make distributions that support these actions. For example, consider some of the following languages: "The Settlor encourages beneficiaries to live independently and not have trust assets substitute for personal work efforts. Beneficiaries are encouraged to pursue careers, philanthropy, volunteerism, parenting, and whatever brings them personal fulfillment and benefits those in greater need and society as a whole." The trustee could thus defray beneficiaries living expenses to permit the beneficiary to spend more time volunteering or to use some of the distributions for charitable gifts.

Include Charities in Trusts: The advice of modern trust planning consistently favors shifting substantial wealth into long term or perpetual

trusts. While that certainly makes sense from a tax planning and asset protection perspective, as wealthy families shift more wealth into these trusts, if the trusts are not authorized to make distributions to charitable beneficiaries, how will future generations of wealthy benefactors fund charitable giving? A simple solution is to permit the trustee to make distributions to charities. There are many ways to integrate flexibility into charitable giving. Such distributions could require the consent of some or all adult beneficiaries to serve as a safeguard against a trustee abusing the discretion. Another option is to grant someone in a non-fiduciary capacity to direct the trustee to make payments to charities. Alternatively, a person in a non-fiduciary capacity can be granted the right to add charitable beneficiaries to the trust. For even more flexibility, a special charitable distribution trustee could be named, and this could be an entity, e.g. a limited liability company, and have a board of managers that can create a succession of people to perpetuate the grantor's wishes and values to future generations.

Permit or Mandate Philosophically Oriented Investing: Socially responsible investing (SRI) is an investment strategy designed to achieve financial returns but to also achieve specified social goals. The term "philosophical" was used because these goals could be green investment strategies, or perhaps strategies that are consistent with a particular set of religious beliefs, or companies that share certain moral standards. You can and should pursue this manner of investing if it is consistent with your lifestyle choices. But for future generations, it is imperative that for a trust to pursue these goals, that any trust agreement expressly permits these investment approaches, and that you delineate the manner of philosophically appropriate investment strategies.

The beautiful and noble goals of charity, helping the poor, and showing kindness should not be limited to a brief holiday season, but can and should be integrated into your year-round decisions, and how you plan your estate and trusts so that these same positive values can be transmitted to future generations. Remember, estate planning should not only be about the transmission of wealth but the transmission of values as well.

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I am an estate planning attorney, author of 42 books, and more than 1,200 articles. I serve on the editorial boards of Trusts & Estates Magazine, CCH (Wolters Kluwer) Professional Advisory Board, CPA Magazine, and the CPA Journal. I'm active in many charitable and community causes and organizations and spend two months/year traveling the country educating professional advisers on planning for clients with chronic illness and raising both awareness and funds for many charities helping people face the challenges of chronic illness. I serve on the board of the American Brain Foundation Board, and its Strategic Planning Committee, and Investment Committee. I hold a BS degree in accounting and economics from Wharton School, an MBA in tax and finance from the University of Michigan, and a law degree from Fordham University School of Law.