

Leaving a Legacy - Charitable Bequests

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A Will is a legal document that expresses wishes regarding the distribution of the owner's property following death. As such, it is an opportunity to financially recognize family, friends, and community. A Will can also include alternate beneficiaries in case the first named beneficiaries fail to survive or otherwise are disqualified from inheritance. Dying without a Will means the ability to express such wishes is not exercised. In the absence of a Will, provincial legislation dictates the distribution of the estate based solely on the relationship/kinship individuals had with the deceased (e.g. legal spouse). This division is totally inflexible.

A Will provides the opportunity to name specific charities as beneficiaries and to detail the size and nature of the bequest. Gifts to charity by Will are called charitable bequests. It is vital that the charity's full legal name be used in the Will otherwise the bequest may fail, thereby creating an intestacy.

Although most charitable bequests are motivated by philanthropic reasons and belief in the recipient charity, there are also income tax incentives for giving. It is therefore important to understand how charitable tax credits work as careful planning can reduce or eliminate income taxes owed at death by benefiting the selected charity in place of the taxman.

Charitable donations made by Will, or in the last year of an individual's life, may be claimed against 100% of net income on the final income tax returns. Any unused tax credits can be carried backward to the year immediately preceding the death. By contrast, the contribution limit for charitable donations during one's life is only 75% of net income.

A Will can also reduce income tax at death by enabling the executor of the will to distribute assets to the chosen charity in their original form ("in specie"). "In specie" gifts of publicly traded securities, employee stock options and ecologically sensitive land all receive a reduced capital inclusion rate of 25%, rather than the normal 50% rate. This incentive makes it twice as tax effective to transfer securities "in specie" rather than selling them and transferring the sale proceeds to the charity.

A charitable bequest in a Will is shaped by an individual's values and personal priorities as income tax incentives only support existing values and priorities. In establishing an estate plan, it is therefore important for an individual to review their personal experiences and determine whether a charity has touched them. Through consultation with legal and financial advisors, an informed decision can then be made which balances personal and family needs with philanthropic wishes.

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