

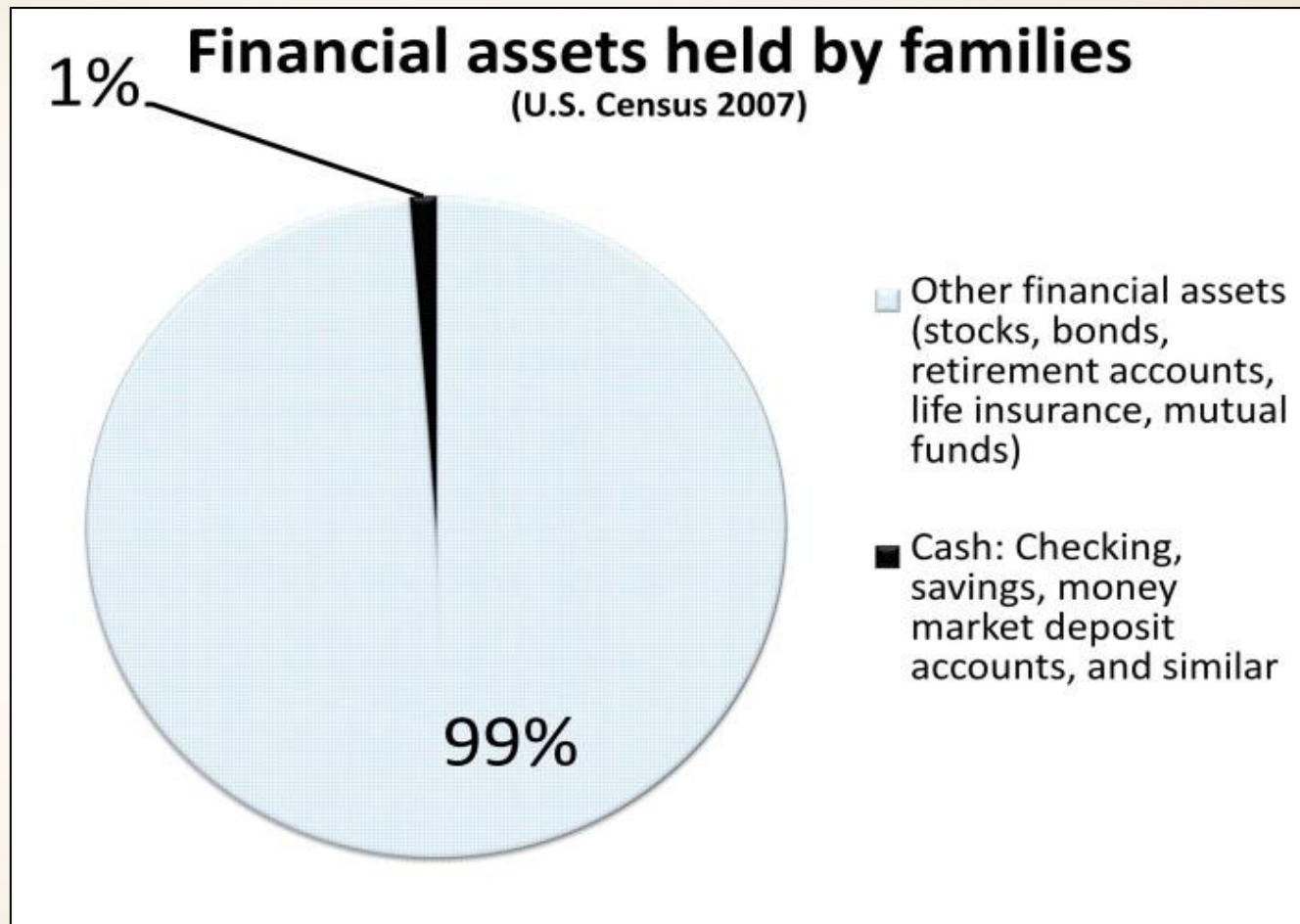
Charity Begins at Home: Donor-Advised Funds and Family Giving

Presented to the Denver Estate Planning Council on March 24, 2016 by:

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Gift Planning Trends in Asset-Based Charitable Planning



Gift Planning Trends in Asset-Based Charitable Planning

- In the past (for illiquid assets)...

Giving primarily real estate

Local Gift Planning Trends in Asset-Based Charitable Planning

- In the past...

Giving primarily real estate

- The new normal

Giving primarily closely-held business interests

Local Gift Planning Trends in Tool-Based Charitable Planning

- In the past...

Charitable remainder trusts

Local Gift Planning Trends in Tool-Based Charitable Planning

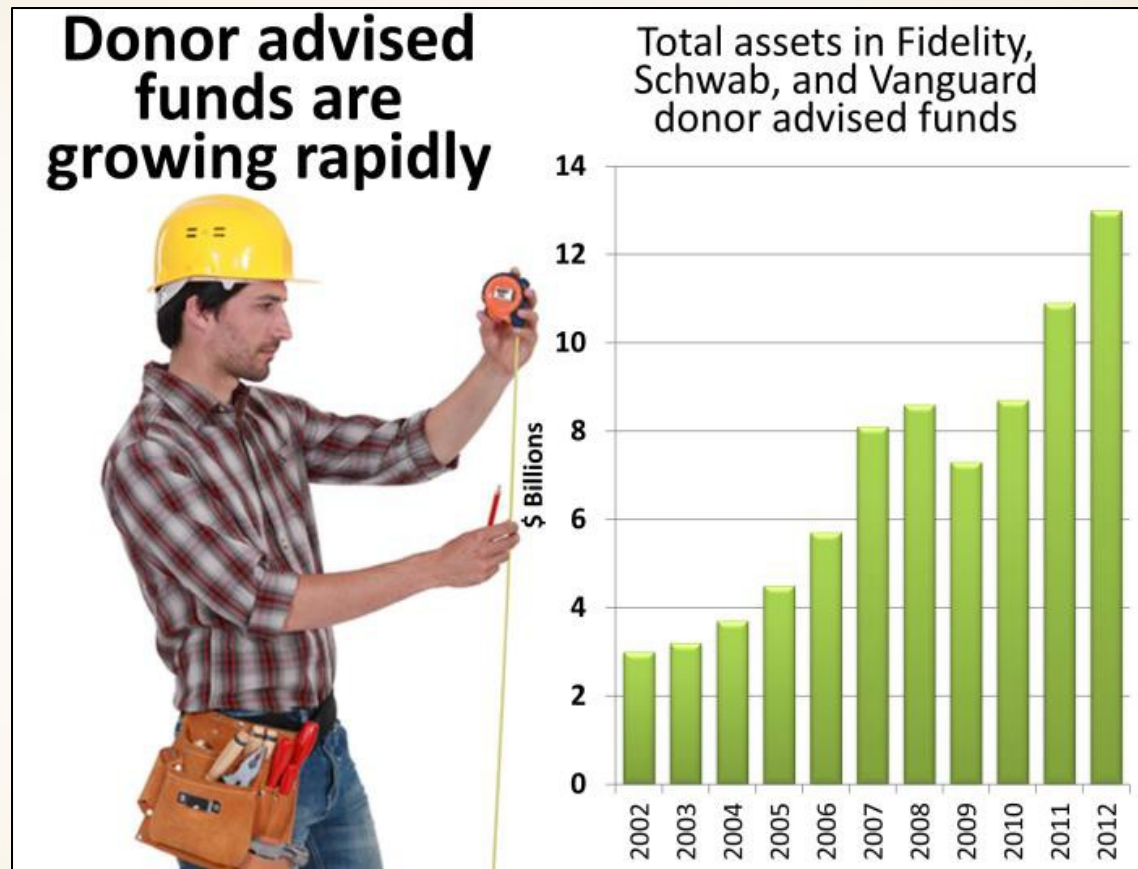
- In the past...

Charitable remainder trusts

- The new normal

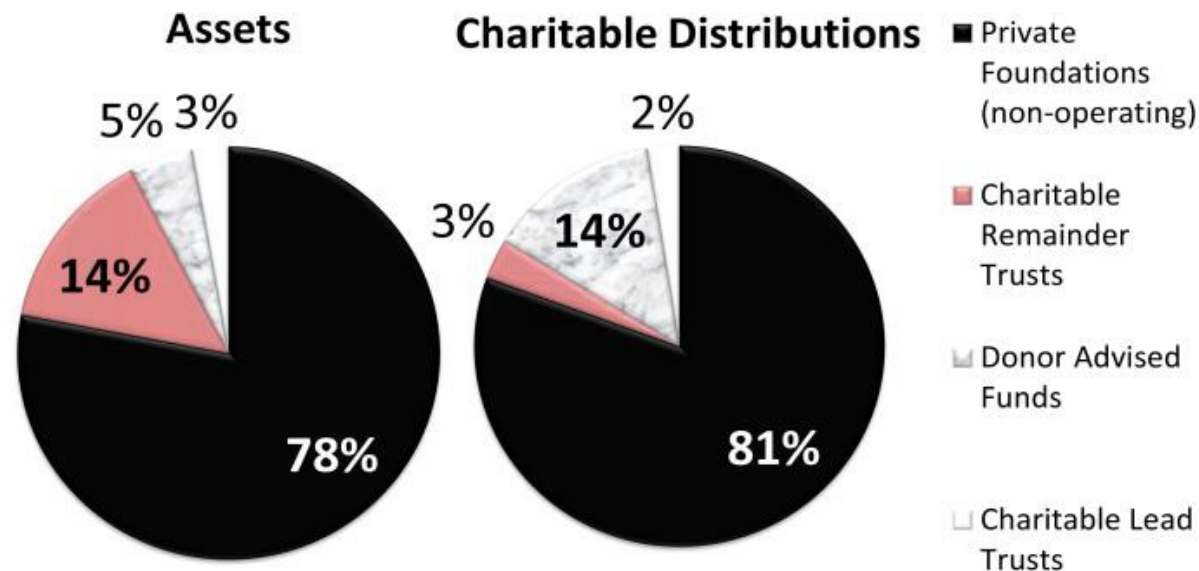
Donor advised funds

Gift Planning Trends in Tool-Based Charitable Planning – Increasing Popularity of DAFs



Gift Planning Trends in Tool-Based Charitable Planning

Private foundations are the dominant charitable planning vehicles



Combining 2010 data from IRS Statistics of Income (PF, CRT & CLT) and National Philanthropic Trust (DAF)

Donor-advised funds v. Private foundations

Donor advised fund

- No minimum payout
- Minimal setup & administrative expense
- Expected control of grants
- Investment management sometimes allowed
- Legislatively new
- High income limits & valuations
- No tax on earnings

Private foundation

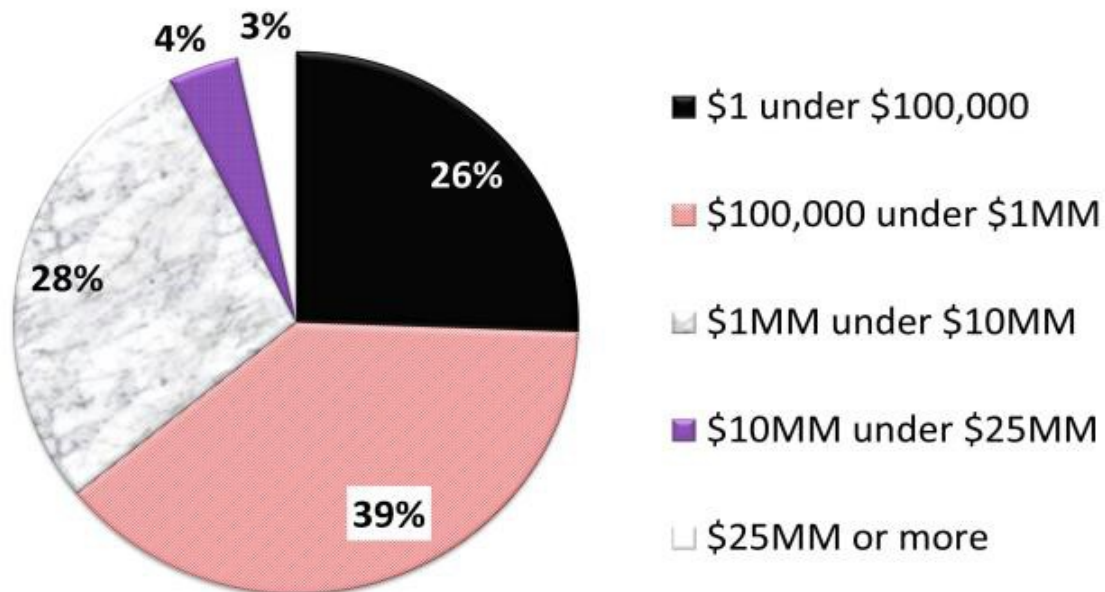
- 5% minimum payout
- Significant setup & administrative expense
- Legal control of grants
- Investment management always allowed
- Legislatively stable
- Low income limits & valuations
- 1% or 2% tax on earnings



Gift Planning Trends in Tool-Based Charitable Planning

Private foundations can be large, but most aren't

Asset Size: Non-Operating Private Foundations



Source: IRS Statistics of Income for 2010. Domestic Private Foundations: Number and Selected Financial Data, by Type of Foundation and Size of End-of-year Fair Market. Excluding those not reporting any assets

Private Foundations and DAFs

"During the past several years, we've had more and more clients inquire about terminating private foundations. For some founders the administrative burden and cost of running a foundation ultimately outweighs the initial thrill of giving like a Carnegie. It's easy to get bogged down with day-to-day details, like overseeing investments, monitoring income and expenditures, and making the required distribution of at least 5% of the entity's assets each year."

- David Scott Sloan, a Boston-based lawyer who heads the National Private Wealth Services group at Holland & Knight.

Private Foundation Dissolution and DAFs

Until recently, the standard practice was to get a private letter ruling from the Internal Revenue Service ensuring that the contemplated transaction wouldn't generate a dissolution tax under Section 507 of the Internal Revenue Code. However, that became unnecessary in most cases after the IRS issued two key revenue rulings: Ruling 2002-28, which involves transfer of assets to other foundations, and Ruling 2003-13, which deals with transformation into a public charity.

Under Ruling 2003-13, when assets are distributed to a public charity that has been in existence for at least five years there is no requirement to notify the IRS. The foundation simply indicates on its tax return, the 990-PF, that this is the organization's final return.

* Fidelity Charitable, *Making the Transition Out of a Private Foundation*

Private Foundation Dissolution and DAFs

The foundation does need to follow other legal formalities, however. It must pass resolutions regarding the distribution of the assets and the dissolution of the organization, transfer the funds, and then file appropriate dissolution documents under state law.

Whether the foundation was initially formed as a trust or a corporation makes a difference in the dissolution procedures. While corporate board members can pass a resolution to dissolve, trustees will need to refer to the trust agreement to determine how the trust can be terminated — or even whether it can be terminated at all. Depending on what the trust agreement says, it may be necessary to get the court's permission to formally dissolve the foundation.

Private Foundation Dissolution and DAFs

There are several pitfalls in this area. One is overlooking the requirement that a foundation distribute at least 5% of its assets each year. Organizations that don't satisfy the payout requirement before dissolution could be subject to excise tax in the year of dissolution. Since the last distribution should go to charity, it's a good idea to prepay legal and accounting expenses. And don't dissolve the entity before filing the last tax return, or you will have no one legally authorized to sign it. In addition to complying with federal requirements for dissolution, foundations must observe state law formalities, which vary widely.

Why donors like DAFs

1. Realistic alternative to private foundation
2. Simple, inexpensive, and efficient
3. Perpetuate a legacy
4. Anonymity
5. Give now, decide later
6. Tax benefits
7. Convenience

Tips and Recommendations on the Use of DAFs

- Getting started
- Mission statement
- Governance framework
- Legacy plan
- Proactive next generation involvement
- Collaboration
- Focus on Impact
- Fun

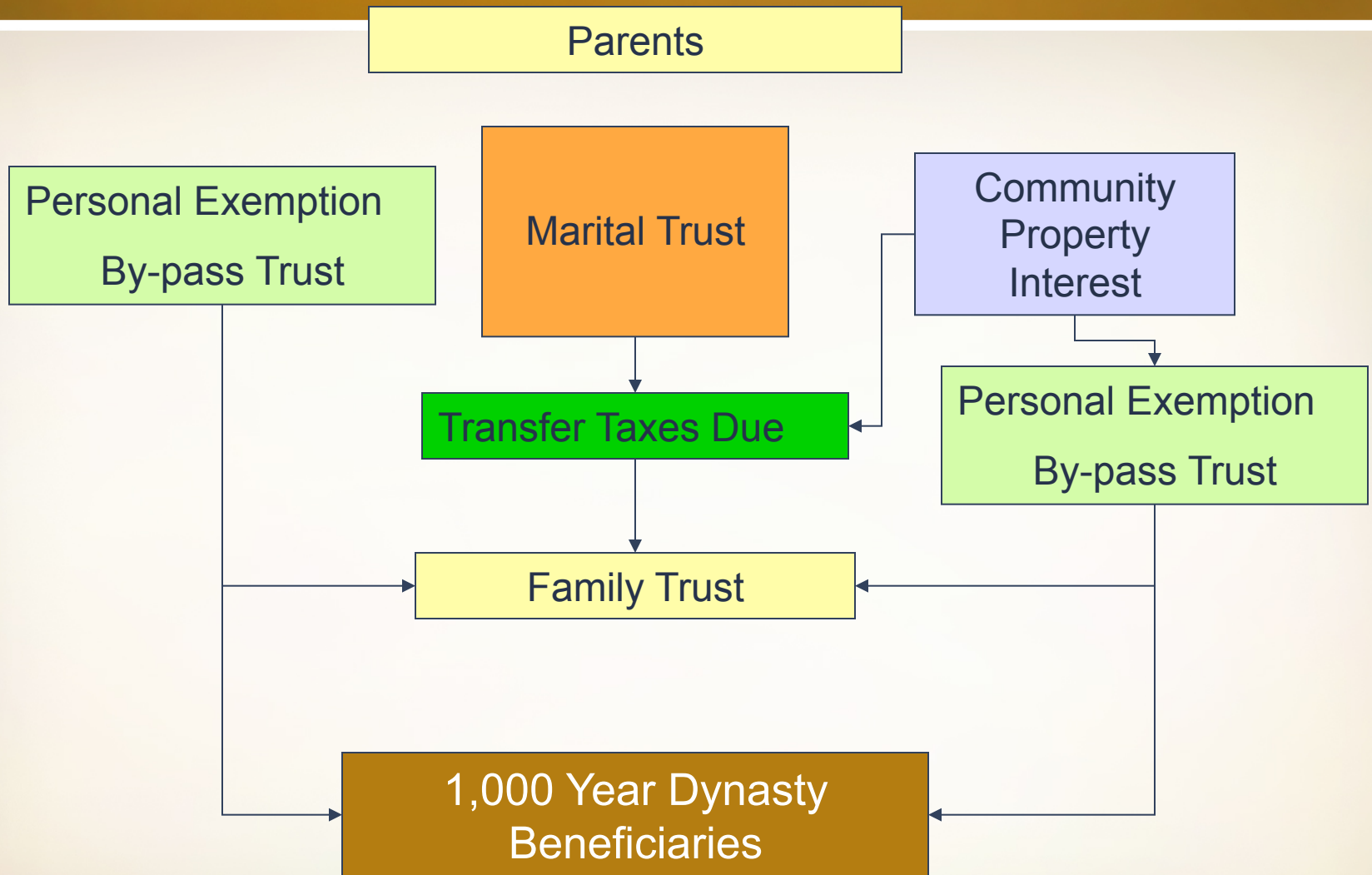
Red flags and traps to avoid when using DAFs in charitable planning (tax and non-tax legal issues to be aware of)

1. Prohibited benefits
2. Excess business holdings and excess benefit transactions
3. The future of DAFs

How advisors can facilitate/encourage their clients to be charitable

- Ten dimes
- Nonqualified charitable remainder trust

Estate Structure Template



Stealth Destructors of Wealth

- Divorces
- Addictions
- Illnesses
- Overspending
- Uninsured liabilities
- Lawsuits (among and external to heirs)
- Affinity group fraud
- Entitlement syndrome
- Bad investment decisions

Comstock Family Endowment

A Self-reliance Development Resource

- To help their future generations become self-reliant
- To provide opportunities for individuals to have personal development
- To prepare their future generations to labor for their sustenance and meet their responsibility to their children
- To encourage their future generations to embrace the principles of stewardship of self, family, and assisting the poor and needy
- To set the stage for each future generation member to have the opportunity to develop their own sense of self and not “rob them of their lives”

Wealth Transfer Guidance

“to set up, insofar as it might be possible, a [plan] under which the curse of idleness would be done away with, the evils of the dole abolished, and independence, industry, thrift, and self-respect be [established]”

Action plan from the Leaders of the Church of Jesus Christ to combat the challenges in personal lives during the Great Depression.

How to help families find fulfilment and bonding through giving

1. Get partners on the same page
2. Have them talk about their giving with their children and grandchildren
3. Have them involve their children and grandchildren in decision-making
4. Encourage them to volunteer as a family
5. Show them how to teach financial literacy
6. Create a dedicated account for giving